

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4289/2013

Devidas s/o Gangaram Lohar
Age 61 years, Occ-Pensioner
R/o N.D.42, J-B/5/4/ Hudco
Vaibhav Nagar, New Nanded
Nanded

..PETITIONER

Versus

- 1] The State of Maharashtra
Through its Secretary Buildings
and Communication Department
Mantralaya, Mumbai
(copy to be served on the
Government Pleader, High Court
of Bombay, Bench at Aurangabad)
- 2] Chief Administrative Officer,
Maharashtra Jeevan Pradhikaran,
Express Tower, 4th Floor, Nariman Point
Mumbai-21.
- 3] Senior Account Officer,
Maharashtra Jeevan Pradhikaran,
Cidco Bhavan (D.K.) 3rd Floor,
Belapur, Navi Mumbai, Mumbai
- 4] Chief Engineer,
Maharashtra Jeevan Pradhikaran
Opp.Milind College, Chhavani,
Aurangabad

..RESPONDENTS

...
Mr.V.D.Patnoorkar,Adv. for petitioner.
Mr.K.G.Patil,A.G.P. for respondent no.1
Mr.D.P.Bakshi,Adv. for respondent nos. 2 to 4.

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**CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA,JJ.**

DATE : 5th January, 2015.

ORAL JUDGMENT : [PER S.V.GANGAPURWALA,J.] :

Rule. Rule returnable forthwith. With consent of parties, Petition is taken up for final hearing.

2] Mr.Patnoorkar, learned counsel submits that the petitioner was initially appointed in the year 1974 as Mistry and then was promoted as a Tracer. In the year 1986, the petitioner was promoted as an Assistant Draftsman in the pay scale of Rs.290-465 plus usual allowances. The petitioner on attaining the age of superannuation, retired in the year 2010. The learned counsel submits that however, for the purpose of pensionary benefits, the petitioner's pay scale as that of Assistant Draftsman is not considered. The petitioner has rendered service as Assistant Draftsman since 1986. However, the same is not considered. Respondents be directed to give all pensionary benefits to the petitioner considering the petitioner as an Assistant Draftsman w.e.f. 10/1/1986 and to pay the differential amount forthwith. The pension is being calculated considering the petitioner as a Tracer. The same is illegal. Even the petitioner has given representation to the respondents however, the same is not decided. Mr.Patnoorkar, learned counsel relied on Government Resolution dated 8/7/1974 to buttress his submission.

3] Mr.Bakshi, learned counsel for the respondents submits that though petitioner was promoted as Assistant Draftsman in the year 1986, the same was illegal as the petitioner had not passed the qualifying examination for being considered to be promoted for the post of Assistant Draftsman. The petitioner was exempted from passing the said departmental/qualifying examination on attaining age of 45 years on 31/12/1996. In view of that, the case of the petitioner as Assistant Draftsman from 1986 cannot be considered and same has rightly not been considered by the respondents. According to learned counsel, petitioner cannot be considered as Draftsman for all purposes. Government Resolution dated 8/7/1974 is not applicable in the case of petitioner.

4] We have considered submissions canvassed by learned counsel for respective parties. It is not disputed by the learned counsel for respective parties that the petitioner possesses qualification of S.S.C. with Intermediate Grade Drawing Examination. Government Resolution dated 8/7/1974 would be applicable in case the person to be promoted as an Assistant Draftsman from the post of Tracer possessing qualification higher than minimum required for the post of Tracer. In the present case, petitioner possesses the minimum qualification required for the post of Tracer and not a qualification higher than the minimum required for the post of Tracer, as such G.R. dated 8/7/1974 would not come to the aid of petitioner.

5] However, it is not disputed by the respondents that on attaining age of 45 years on 31/12/1996, petitioner gets exemption from passing Departmental Examination to be considered for the

post of Assistant Draftsman. The petitioner was already working as an Assistant Draftsman since 1986, as such there is no impediment for the respondents to consider the petitioner as an Assistant Draftsman atleast from 1/1/1997 that is the date when the petitioner stands exempted from passing Departmental Examination to be considered for the post of Assistant Draftsman.

6] In light of the above, we pass following order :

The respondents shall consider the petitioner eligible to be Assistant Draftsman w.e.f. 1/1/1997 and shall calculate pensionary benefits considering the petitioner to be eligible to be Assistant Draftsman since 1/1/1997 and shall also consider grant of all consequential benefits expeditiously preferably within three months from today. Rule accordingly made partly absolute. No costs.

V.L.ACHLIYA,J.

S.V.GANGAPURWALA,J.

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