

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9964 OF 2013

Sunil S/o Prabhakar More,
Age : 36 Years, Occ : Unemployed,
R/o 94, Dikshit Wadi, Jilha Peth,
Jalgaon, Dist. Jalgaon

...PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
- 2] The Collector, Jalgaon and
Chairman of District Selection Committee,
Zilla Parisha, Jalgaon.
- 3] The Chief Executive Officer,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.
- 4] The Executive Engineer,
B & C Department,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.

... RESPONDENTS

WITH

WRIT PETITION NO. 9973 OF 2013

Vishal S/o Baburao Tayade,
Age : 28 Years, Occ : Unemployed,
R/o DM 5/3, B.T.P.S. Colony,
Deepnagar, Tq. Bhusawal,
Dist. Jalgaon.

...PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32

- 2] The Collector, Jalgaon and
Chairman of District Selection Committee,
Zilla Parisha, Jalgaon.
- 3] The Chief Executive Officer,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.
- 4] The Executive Engineer,
B & C Department,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.

... RESPONDENTS

WITH**WRIT PETITION NO. 10000 OF 2013**

Sudhir S/o Liladhar Sonawane,
Age : 34 Years, Occ : Unemployed,
R/o "Chaitnya", Plot No.83,
Old Bhagwan Nagar, Behind Girna Talkies,
Near Bahinabai School, Jalgaon,
Dist. Jalgaon.

...PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
- 2] The Collector, Jalgaon and
Chairman of District Selection Committee,
Zilla Parisha, Jalgaon.
- 3] The Chief Executive Officer,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.
- 4] The Executive Engineer,
B & C Department,
Zilla Parishad, Jalgaon,
Tq. & Dist. Jalgaon.

... RESPONDENTS

Advocate for Petitioner : Mr. P. D. Bachate h/f Mr. Shinde Ravindra S.
AGP for Respondent/State : Mrs. S.G. Chincholkar
Advocate for Respondent nos. 3 and 4 : Mr. Sharma Vijay.

**CORAM : S. S. SHINDE &
A. M. BADAR, JJ.**

DATE : 7TH OCTOBER, 2015.

PER COURT:

1] Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties heard finally.

2] By this petition, petitioners who applied for recruitment to the post of Junior Engineer with the Zilla Parishad, Jalgaon, are challenging the communication dated 14.11.2013, issued by the Chief Executive Officer, Zilla Parishad, Jalgaon (Respondent No.3) intimating that their selection for the post of Junior Engineer is cancelled.

3] It is case of the petitioner in W.P. No. 9964 of 2013 that he belongs to Scheduled Tribe category and has passed examination of Diploma in Mechanical Engineering. It is case of the petitioner In W.P. No. 10000 of 2013 that he belongs to Scheduled Tribe category and has passed Degree examination in Mechanical Engineer. Petitioner in W.P. No.9973 of 2013 has averred that he belongs to Scheduled Caste and

has passed Diploma in Mechanical Engineering as well as examination of B.Tech in Mechanical Engineering. According to petitioners and rather undisputedly, the District Selection Committee issued an advertisement on 10.5.2013 for recruitment on various posts in Zilla Parishad, Jalgaon. 8 Posts of Junior Engineers were also advertised in that advertisement for recruitment. Petitioners, being qualified and eligible for recruitment on the post of Junior Engineer had applied for the said post in pursuance to this advertisement. According to petitioners, after submission of the applications forms in prescribed proforma, they appeared for written examination and subsequently as they cleared the written examination, they were called for interview. On 20.7.2013, Select List was published on the website of the Zilla Parishad and names of petitioners were also shown as selected candidates from the reserved category for the posts of Junior Engineers. It is case of the petitioner that thereafter, they were directed to submit character certificate in prescribed proforma. Accordingly, they made necessary compliance. However, they were not given appointment orders and as such, they submitted representations to respondent authorities for taking suitable steps for issuing appointment orders in their favour. According to petitioners, instead of issuing appointment orders in their favour, by communication dated 14.11.2013 impugned in the instant petitions,

respondent No.3 Chief Executive Officer, Zilla Parishad, Jalgaon, informed them that their selection is cancelled.

4] In pursuance to the notices issued to Respondents, Respondent No.3 has filed affidavit in reply. It is admitted in para 2 of the said affidavit in reply that, the advertisement was issued for recruitment on several posts including that of Junior Engineers in the Zilla Parishad, Jalgaon through the District Selection Committee, Jalgaon. According to respondent No.3, it was specifically provided in the advertisement vide item no.4 that in case the candidate is not found eligible for appointment, it would be so declared and the District Selection Committee had reserved such right and that the candidate would not have any complaint in this regard. In para 3 it is stated that, there are 76 approved posts of Junior Engineers which are required to be filled in by direct recruitment. Respondent No.3 further contended that in the instant selection process of 2013, the advertisement was issued for filling in 8 posts (SC-3, ST-2, NT-1, SBC-1, OBC-1). The nature of work and duties of the Junior Engineers to be recruited is of civil nature, and therefore, only Civil Engineers are required. It is further stated that, the nature of work and duties to be carried out by the Junior Engineers to be recruited cannot be discharged by candidates holding qualification in electrical or mechanical engineering. In view of the need and requirement of Zilla

Parishad only the candidates possessing the necessary educational qualification in civil engineering branch have been selected. It is stated that, the other candidates who are possessing qualification in mechanical engineering, have also been communicated vide letter dated 14.11.2013 that, their selection has been cancelled.

5] Respondent Nos. 1 and 2 have also filed their affidavit in reply. The contentions raised in the affidavit in reply filed by Respondent No.3 have been reiterated in the said affidavit. It is stated in para 8 of the said affidavit in reply that, the District Selection Committee is headed by the Collector and the advertisement was finalized by the District Selection Committee. The error had crept in by oversight and as such no malafides can be attributed. It is further stated that the District Selection Committee noticed the mistake and had corrected the same by cancelling the selection of the petitioner.

6] We have heard the learned counsel appearing for the petitioner, the learned counsel appearing for Respondent No.3 and the learned A.G.P. appearing for Respondent Nos. 1 and 2. With their able assistance, we have carefully perused the grounds taken in the Petition and annexures thereto, all other documents placed on record, the relevant extract of the Recruitment Rules, which is placed on record at Page 45A of the compilation of the Writ Petition and the judgments

cited by the learned counsel appearing for the petitioner across the bar.

7] Learned counsel for the petitioners further submitted that the impugned communication cannot be sustained as reliance on Condition No.4 of the advertisement for canceling the selection of the petitioners is totally misplaced.

8] Per contra, learned counsel for respondent No.4 Zilla Parishad, contended that only Civil Engineers were required to be recruited considering the nature of work available with the Zilla Parishad. As such, according to him, the impugned communications are perfectly correct. Learned AGP appearing for the respondent Nos.1 and 2 reiterated the submissions of Shri Sharma, learned counsel for respondent Nos. 3 and 4 and contended that because of over site error had crept in and the same was corrected by canceling the selection of petitioners.

9] At the outset, let us put on record, the required educational qualification for the post of Junior Engineer as per the advertisement issued by the respondent Selection Committee for recruitment to the post of Junior Engineer in Zilla Parishad, Jalgaon. Advertisement dated 10th May, 2013 (Exhibiti B) shows that apart from requisite qualification regarding knowledge of handling of computer, a

candidate aspiring for the post of Junior Engineer should have held a Degree or Diploma (3 years Course) or equivalent educational qualification in Civil Engineering, Mechanical Engineering or Electrical Engineering. It becomes clear that the candidate applying for the post of Junior Engineer must possess either Degree or 3 years Diploma in Civil Engineering, Mechanical Engineering or Electrical Engineering. In other words, candidate possessing Degree or Diploma in any of these 3 branches of Engineering was eligible to apply for the post of Junior Engineer, as per the advertisement. Undisputedly, all 3 petitioners are possessing this educational qualification as advertised in the advertisement at Exhibit B to the petition.

10] The learned counsel appearing for the petitioner invited our attention to the pleadings and grounds taken in the Petition, annexures thereto and also to the judgment of the Hon'ble Supreme Court in the case of *Manjushri Vs. State of Andhara Pradesh and another, 2008 AIR SCW 1470, Himani Malhotra vs. High Court of Delhi, in Writ Petition (Civil) No. 490 of 2007, decided on 30.4.2008 by the Honourable Supreme Court and Ramesh Kumar Vs. High Court of Delhi & another, in Writ Petition (Civil) No. 57 of 2008 decided on 1.2.2010, by the Honourable Supreme Court* and submits that, once the post is advertised, and in pursuant to the said advertisement selection process was undertaken by the Respondents

leading to the selection of petitioners, it was not open for Respondents to contend that petitioners had completed Course of Engineering from Mechanical Branch and requirement of the Department is that of Civil Engineers. Post advertised was not of Civil Engineer but that was of Junior Engineer.

11] Now, let us examine the Recruitment Rule for recruitment to the post of Junior Engineer in the Zilla Parishad. Rule 5 of the Appendix VI, of the Rules laying down the qualification of candidates and method of appointment to the post included in the District Services (Class III) and District Services (Class III) (Subordinate Engineering) provides for educational qualification for recruitment to the post of Junior Engineer from District Technical Services (Class III) (Engineering) by the Zilla Parishad. Any candidate possessing a recognized Degree or Diploma (3 years course) in Civil, Mechanical or Electrical Engineering as the case may be, or equivalent qualification is eligible for appointment to the post of Junior Engineer in terms of provision of Appendix VI. For the sake of convenience, relevant portion of this recruitment rule i.e. Appendix VI under Rule 5, is reproduced hereinafter and it reads thus :-

“APPENDIX VI
(See rule 5)

Rule laying down the qualifications of candidates for and methods of appointment to the posts included in the District Technical Service Class III (Engineering) and District Service (Class III) Subordinate Engineering)

Sr. No. 1	Service and Cadre 2	Post 3	Qualifications for and methods of appointment 4
2	District Technical [(I) Service (Class (III) Engineer] (Engineering), Grade II.	Junior	1. Appointment shall be made either - 5a) by promotion from amongst suitable Assistant to Junior Engineers] 6[and maistries Grade I] who have passed the Professional Examination for Overseers prescribed by the State Government; (b) by nomination from amongst candidates who - (i) unless already in the service of the Zilla Parishad are not more than 4(29) years of age, and (ii) possess a recognised degree or Diploma (three years course) in Civil, Mechanical or Electrical Engineering, as the case may be, or an equivalent qualification. 2. The ratio for appointment by promotion and nomination shall be 1 : 1: Provided that the temporary appointments made by the Chief Executive Officers of Zilla Parishads to the posts of Extension Officer (Works) in pursuance of the order contained in Government Resolution, Rural Development Department, No.APT-1074-CN-304/IV, dated the 27th April 1976, shall be regularised as per the provisions contained in para. (1) above and that the appointment in the ratio by nomination and promotion shall be 3:1.]

1. Deleted by G.N. of 10-12-1979
2. Subs.of *ibid*

4. Subs.by G.N. of 29-9-1983
5 Subs.by G.N. of 15-11-1985.

3. Subs.*ibid.*

6. Ins.by G.N. of 15-10-1986

12] Upon careful perusal of the aforementioned Rule and particularly Rule 2(b)(ii) so far the post of Junior Engineer is concerned it becomes clear that there is no error in the advertisement dated 10.5.2013 which prescribed educational qualification for the post of Junior Engineer, as holder of Degree or Diploma (3 years course) from Civil, Mechanical or Electrical Engineering course.

13] It is not in dispute that all petitioners participated in the selection process and they had passed written as well as oral examination and ultimately, their names figured in the final select list for the post of Junior Engineer, as seen from Annexure 'F' to the petition.

14] In the light of these facts, it is seen that thereafter petitioners were directed to furnish character certificate and other relevant documents which the petitioners submitted. Thereafter, by the impugned communication dated 14.10.2013, all petitioners were informed that their selection is cancelled. Perusal of this communication dated 14.11.2013, issued by the Chief Executive Officer, Zilla Parishad, Jalgaon reflects reason for cancellation of selection of petitioners. It is stated in the impugned communication that considering the need of the Zilla Parishad, candidates holding

Diploma in Civil Engineering are only qualified for appointment to the post of Junior Engineer. It is further informed by this communication that as the petitioners are holding qualification related to Mechanical Engineering, they are not qualified to hold the post of Junior Engineer. It is further informed that by invoking powers under Condition No.4 of the advertisement, selection of petitioners is cancelled.

15] Reason in the impugned communication dated 14.11.2013, that holders of educational qualification i.e. Degree or Diploma in Mechanical Engineering are not qualified for recruitment to the post of Junior Engineer with Zilla Parishad, is totally contrary to the terms of advertisement as well as Recruitment Rules reproduced in foregoing paragraph. The advertisement for recruitment, so also, relevant rule categorically states that holder of either Degree or Diploma in Civil, Mechanical or Electrical Engineering are eligible to apply for the post of Junior Engineer. Thus, petitioners, who are undisputedly holding those qualifications either Diploma or Degree in Mechanical Engineering, upon their selection in pursuant to open advertisement are eligible for appointment as Junior Engineer. The stand taken by the respondents for canceling selection of petitioners is totally contrary to the recruitment Rule as well as the terms of advertisement. Such action on the part of respondent amounts to changing the rules of game after game was played. In the matter of *K.*

Manjushri (supra), Honourable Apex Court held that selection criteria ought to be adopted and declared at the time of commencement of recruitment process and rules of game cannot be changed after game is over. In the case in hand, by the impugned communications, respondents are trying to change the eligibility criteria after completion of the selection process and after preparation of select list and that too contrary to the terms of the advertisement as well as the recruitment rules. As such, the impugned communications can not be sustained.

16] Respondent No.3 Chief Executive Officer, has resorted to the condition No.4 in the advertisement for canceling selection of petitioners. Perusal of advertisement issued for recruitment of Junior Engineer, shows that applications were invited On-line without any document. As such, condition No.4 in the advertisement is to the effect that as the candidates are allowed to appear for the written examination without scrutiny of their documents, they will not have any right of selection only on the basis of marks obtained by them in that examination. Condition No.4 further provides that after scrutiny of the entire documents, eligibility of the candidates will be decided and if on scrutiny of documents, any candidate is found ineligible, he will be so declared and his candidature shall be rejected.

17] It is not the contention of the respondents that after scrutiny of documents any of the petitioners was found to be ineligible either as per the terms of the advertisement or recruitment rules. It is not the case of the respondents that any of the petitioners is found to be not holding requisite educational qualification i.e. Degree or diploma in Engineering (3 years course) in Civil, Mechanical or Electrical Engineering. As such, respondent No.3 Chief Executive Officer, had committed error in placing reliance on Condition No.4 for canceling the selection of petitioners on the post of Junior Engineer. Therefore impugned communications are totally illegal and arbitrary.

18] In view of the foregoing reasons, petitions are required to be allowed and accordingly, they are allowed in terms of prayer clauses (C) and (D). However, we make it clear that respondent No.3 Zilla Parishad, will be at liberty to post petitioners as per their qualification on appropriate post of Junior Engineering.

19] Rule is made absolute in above terms. No costs.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-