

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4134 OF 2013

Shri Mayank Nikunjilal Shah	...	Petitioner
V/s.		
Maharashtra Jeevan Pradhikaran & anr.	...	Respondents

Mr. N.V. Bandiwadekar for the petitioner.

Ms. Neeta Karnik for respondent no.2.

Mr. C.P. Yadav, AGP for the State.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

12th January, 2015.

P.C.

The petitioner joined the services with the respondents as Junior Engineer from 1st February, 1980. He was promoted as sub-divisional officer with effect from 26th June, 1996. It is submitted that he completed 45 years of age as on 2nd June, 2002. The respondent employer granted exemption from passing professional examination by an order dated 24th January, 2003. The petitioner was promoted as Executive Engineer by an order dated 2nd July, 2007. The exemption granted in favour of the petitioner was cancelled by respondents by an order dated 30th April, 2011. Against the said order petitioner approached this Court. By an order dated 3rd April, 2012 in Writ Petition No. 6412/11 Division Bench of this Court remanded the matter back to respondents for a fresh decision. Accordingly, the respondents passed a fresh order on 17th November,

2012. Petitioner challenged the said order. By an order dated 12th February, 2013 the Division Bench of this Court set aside the impugned order therein and directed respondents to give personal hearing to the petitioner and pass a fresh order accordingly. Consequent thereto the respondent passed the present impugned order on 17th April, 2013. By this order the respondent cancelled the exemption granted in favour of the petitioner consequent to which the petitioner could be brought down to the post of Dy. Engineer.

2. The learned Counsel appearing for the petitioner submits that exemption granted once cannot be withdrawn. The petitioner has put in unblemished services for last 25 years. It would be unreasonable and unjust to revert him at this stage on the ground that petitioner failed to pass professional examination. It was further submitted that in case the reversion takes place, the salary earned and emoluments earned by the petitioner in respect of the post held by the petitioner shall not be recovered.

3. The learned Counsel appearing for respondents submits that provisions of Section 2 of the Maharashtra Public Works Manual concerning procedure and rules are adopted by the respondent- Maharashtra Jeevan Pradhikaran. Rule-2 under caption (b) reads as under:

“ Officers who are 45 years old or above are totally exempted from passing the professional examination, while those who are between the ages of 40 and 45 are exempted from passing the professional examination except in the subject of “Accounts”.

The age of 40 or 45 for the purposes of exemption from

passing the professional examination should be counted with reference to the date of the first appointment or promotion to the Class II cadre and the liability of an officer to pass the examination so far as it exists with reference to the date of the first appointment or promotion will not cease on attaining the age of 40 or 45 years subsequently.”

4. Learned Counsel for respondents submits that submissions of the petitioner that he was totally exempted from passing the professional examination are not correct. The reading of this provision would indicate that there was no exemption granted in case of petitioner. Learned Counsel submits that identical question arose before this Court in proceedings of a Writ Petition No. 2163/2009. The Division Bench at Nagpur Bench of this Court by an order dated 10th June, 2009 refused to interfere and rejected the contentions of the petitioner therein seeking grant of exemption from appearing in the professional examination. The learned Counsel further placed reliance on second order passed by the Division Bench of this Court at Nagpur in Writ Petition No. 3799/2009 on 12th October, 2009. The learned Counsel submits that as petitioner failed to pass professional examination, the respondent authority had to cancel the exemption which was wrongly granted at the relevant time.

5. We have perused the record placed before us and rules framed for the said purposes. We have also perused the order passed by this Court. The claim of the petitioner that after attaining the age of 45 years he was totally exempted from appearing in examination does not appear to be convincing. Such a view has already been adopted by this Court in the petitions filed before the Nagpur Bench of Bombay High Court. The learned Counsel for the petitioner submits

that so far he has no instructions to make any statement that these orders were interfered with by the higher Courts. The issue raised in this petition is identical to the petitions filed earlier and disposed of by this Court.

6. The learned Counsel appearing for the petitioner on instructions submits that petitioners therein were reverted back to the respective posts but the department had chosen not to seek recovery of the salary and the other emoluments disbursed to the respective petitioners.

7. In this view of the matter, we are not inclined to interfere with the petition. The petition is dismissed, however, the salaries and other emoluments and allowances disbursed to the petitioner shall not be recovered from him, except the increments.

8. At this stage, learned Counsel appearing for the petitioner seeks to continue the ad-interim relief for some more time. Learned Counsel for respondents objects to the same. We are not inclined to continue the interim-relief. The prayer stands rejected.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)