

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 777 /2015

(Shri Ashok s/o Narayan Vande vs. State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr. S.A.Pathak, Advocate for the petitioner
Mr. S.M.Puranik, Advocate for Respondent Nos. 2 to 5

**CORAM : SMT. VASANTI A. NAIK &
A.S. CHANDURKAR, JJ.**

DATED : 16th September, 2015.

Heard.

By this petition, the petitioner challenges the orders of the respondent-Corporation, dated 16.12.2013 and 20.2.2014, refusing to grant the benefit of time-bound promotion to the petitioner.

The petitioner was appointed as a Junior Engineer by the respondent-Corporation on 27.9.1984. The petitioner was promoted as a Sectional Engineer on 3.10.1989 and a departmental enquiry was conducted against him. The petitioner was held guilty of the charges by the Inquiry Committee. However, the respondent-Corporation constituted a three-Member Committee to reconsider the charges. The three-Member Committee exonerated the petitioner. Since there was a variance in the report of the Inquiry Officer and the three-Member Committee and there was no decision by the State Government giving finality to

any of the reports, the petitioner filed a Writ Petition for a direction to the State Government to take a decision in the matter. In the meanwhile, on 1.2.2001, the petitioner applied for voluntary retirement, on medical grounds. On 24.4.2002, the petitioner was asked by the Corporation to appear before the Medical Board. The petitioner appeared before the Medical Board on 29.4.2002 and was found unfit. The Corporation, therefore, by an order dated 13.11.2003 accepted the application of the petitioner for voluntary retirement, on medical ground, with effect from 29.4.2002, the date on which the Medical Board had declared the petitioner unfit. After the voluntary retirement, the petitioner was paid increment for the year 2001, gratuity and leave encashment. Several years after his retirement, the petitioner made an application to the Corporation for granting the benefit of time-bound promotion to the petitioner, on the ground that the petitioner had completed 12-years of continuous service. The Corporation rejected the application of the petitioner by the impugned order. According to the Corporation, the petitioner had not passed the professional examination that was required to be passed for securing the time-bound promotion. The Corporation found that the petitioner had not completed 45 years of age while in service and, therefore, he was not entitled for exemption from appearing at the professional examination. The orders of the Corporation are impugned in the instant petition.

On hearing the learned counsel for the parties, it appears that the petitioner would not be entitled to the

relief claimed. The Corporation was justified in rejecting the application of the petitioner for grant of time-bound promotion. The petitioner was permitted to retire voluntarily from service with effect from 29.4.2002, by the order dated 13.11.2003. Though the petitioner claims that he has worked for the period from 29.4.2002 to 13.11.2003, the Corporation has seriously disputed the said fact. The Corporation has stated in the affidavit-in-reply that the records for the said period are not available. Even if we assume that the petitioner had worked for the said period, the petitioner cannot seek the benefit of the time-bound promotion as he has completed 45-years of age on 3.11.2003 and, by the order dated 13.11.2003, the petitioner stood retired with effect from 29.4.2002. Admittedly, the petitioner has not passed the professional examination. The petitioner had also not completed 45-years of age on 25.4.2002 i.e., the date of his retirement and, therefore, he could not have been exempted from passing the professional examination. The petitioner has not questioned the order dated 13.11.2003, retiring the petitioner from service with effect from 29.4.2002. The claim of the petitioner for time-bound promotion is belated and seems to be an after-thought. The Corporation was justified, in the circumstances of the case, in rejecting the application filed by the petitioner.

Since there is no merit in the Writ Petition, the same is dismissed, with no order as to costs.

JUDGE

JUDGE