

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

934 WRIT PETITION NO. 2609 OF 2003

SHIVAJI MALHARI WARKAD
VERSUS
ZILLA PARISHAD NANDED & ORS

...

Advocate for Petitioner : Mr. S B Talekar
AGP for Respondents State: Mr. V. S. Badakh
Advocate for Respondent Nos. 1 to 3 :Mrs Yogita M.
Kshirsagar

WITH

934 WRIT PETITION NO. 4846 OF 2013

SHIVAJI MALHARI WARKAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. V. G. Salgare
AGP for Respondents State: Mr. V. S. Badakh
Advocate for Respondent No. 4: Mr. V. S. Panpatte

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 14th October, 2016

ORDER:

1. We have heard Mr. Talekar and Mr. Salgare, the learned counsel for the petitioner, Mrs. Kshirsagar, learned counsel for the Zilla Parishad so also the learned AGP.

2. The learned counsel for the petitioner submits that the petitioner was appointed as Mistri Grade -1 on 24.08.1994 The petitioner was due for promotion. On

31.03.2001, the petitioner was given conditional promotion on temporary basis as a Junior Engineer. One of the conditions was that the petitioner shall pass professional examination within two years from the date of promotion, failing which he would be liable for reversion. The petitioner had appeared for the professional examination. By order dated 2nd July, 2003, the petitioner was reverted on the ground that he has not passed the professional examination within two years. The learned counsel submits that the petitioner was not relieved from the charge. The petitioner made a representation, the same is not considered. As such the petitioner filed the present writ petition.

3. According to the learned counsel, the condition of passing professional examination within two years is contrary to the Rules. The professional examination has to be passed within three years from the date of actual promotion. Moreover, there is no provision in the Rules that even if the professional examination is not passed, the petitioner can be reverted. The petitioner cannot be reverted on the ground that he has not passed the professional examination within two years. The learned counsel

further submits that even the condition of passing the professional examination within two years can be relaxed. The petitioner is entitled to be granted a retrospective date of promotion to the post of Junior Engineer from S.T. category from 24.08.1997. The learned counsel submits that the petitioner had already passed Diploma in Engineering in the year, 2006 and had acquired B. E. Degree in the year 2010. As such, even otherwise the petitioner is qualified and only on the ground that the petitioner has not passed the professional examination, now cannot be reverted. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Abdul Saleem Siddiqui s/o Abdul Rahim Vs. State of Maharashtra, reported in 2004(3) Mh.L.J.450.**

4. Mrs. Kshirsagar, the learned counsel for the Zilla Parishad submits that the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 are applicable to this case. One of the conditions for a candidate to be considered for promotion to the post of Junior Engineer is that the said candidate should possess either Diploma or Degree in Engineering and also should pass professional examination within two

years of the promotion. The petitioner, not having passed the professional examination within the stipulated period, is liable to be reverted even as per order of promotion. The learned counsel submits that even the Commissioner has considered the case of the petitioner and has held that as the petitioner has not passed the professional examination, the petitioner cannot be considered in the seniority list of junior engineer.

5. It is not disputed that the petitioner, till date, has not passed the professional examination.

6. The Rules in question was the subject matter of interpretation before this court in the case of **Abdul Saleem** referred supra, wherein this court has observed as under:-

"10. We are of the clear view that the provision contained in Clause (a) requires to be construed harmoniously in consonance with the intention of the rule makers which is explicit in the language used in Clause (b). Clause (a) reads thus:-

"Appointment shall be made either -

(a) by promotion from amongst suitable Assistant to Junior Engineers and maistries Grade I who have passed the Professional

Examination for Overseers prescribed by the State Government.

(b)"

It is obvious that the examination for overseers is an inferior qualification, as compared to possessing a recognised degree or diploma and a person possessing a degree or diploma could be presumed to possess the requisite knowledge which a candidate possesses by passing Professional Examination for Overseers. In this view of the matter, with a view to harmoniously construe Clause (a) and (b), we propose to read in Clause (a), the following words, so that Clause (a) could be read down to include and encompasses passing of the Professional Examination for overseers in regard to only such of the Assistant to Junior Engineers who have not passed the recognised degree or diploma (three years course) in Civil, Mechanical or Electrical Engineering, as the case may be. In our considered view, Clause (a) needs to be read thus:-

"Appointment shall be made either by promotion from amongst suitable Assistant to Junior Engineers and maistries Grade I who have passed the Professional Examination for Overseers prescribed by the State Government, or who possesses a recognised degree or Diploma (three years course) in

Civil. Mechanical or Electrical Engineering,
as the case may be, or an equivalent
qualification." (Emphasis supplied)

We are reading the underlined portion in the rule.

If so read, the relevant rule would not result in absurdity and the legislative intent would be achieved.

If read in proper perspective, possessing Professional Examination for overseers prescribed by the State Government, would be no doubt, necessary qualification only for those who do not possess a Degree or Diploma of three years. If so read, there would be no inconsistency and in this view of the matter, we conclude that the petitioners who possess recognised Diploma (three years course) in Civil Engineering and though they do not possess the Professional Examination for Overseers prescribed by the State Government, they are still eligible for being considered for appointment in the post of Junior Engineer by promotion.

10. It has been held by the Division Bench of this court that if a candidate acquires the Diploma or Degree in Engineering, then it will not be obligatory on such a person to pass professional examination. In the present case, as submitted, the petitioner has passed diploma in the year 2006. As such, can be

considered in the seniority list of Junior Engineers from the year 2006 and the further benefits be accorded to the petitioner considering the petitioner to be eligible for the post of Junior Engineer in the year 2006.

7. By virtue of the interim orders of this Court, the petitioner is functioning as a Junior Engineer. In view of that the salary which is paid to the petitioner as that of Junior Engineer since the date of promotion shall be protected as the petitioner has actually discharged the functions of the Junior Engineer. No recovery can be claimed in that regard and for all further purposes, the petitioner shall be deemed to have been placed in the seniority list of Junior Engineers as being eligible from the year 2006.

8. Rule is accordingly made absolute in above terms. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC