

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

WRIT PETITION NO.8420 OF 2015

Shri Shriniwas Gurunath Gangthade,
Age: 49 Years, Occup. : Service as
Assistant Engineer, Class-II, Zilla
Parishad, Latur, R/o.Near Zulelal Temple
Narayan Nagar, Latur,
District Latur **PETITIONER**

VERSUS

- 1] The Zilla Parishad, Latur,
Through its Chief Executive Officer,
- 2] The Divisional Commissioner,
Aurangabad.
- 3] Principal Secretary,
Rural Development Department,
Maharashtra State,
Mantralaya, Mumbai-32.

[Copies of respondents No.2 and 3
to be served through Government
Pleader, High Court, Bench at
Aurangabad] **RESPONDENTS**

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Mr.V.D.Sapkal, Advocate for the Petitioner
Mr.S.R.Tandale, Advocate for Respondent No.1
Mr.S.K.Kadam, AGP for Respondent Nos.2 & 3.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 20.06.2016
Pronounced on : 24.06.2016

JUDGMENT: [Per S.S.Shinde, J.]:

This Petition is filed with the following prayers:

- B] To hold and declare that list published by the Government as per Government Resolution dated 04-02-2014 [Exhibit O] to the extent of entry No. 210 in Part No. I of seniority list showing date of petitioner's regular appointment as 08-03-1999 is illegal by issuing appropriate writ, order or direction in the nature of writ or as the case may be.
- C] To direct respondent No.1 to correct regular appointment date of the petitioner as 04-04-1992, as mentioned in service book by issuing appropriate writ, order or direction in the nature of writ or as the case may be.
- D] To direct respondent No.1 to correct seniority list to the extent of petitioner showing the date of his regular appointment as 04-04-1992 by

issuing appropriate writ, order or direction in the nature of writ or as the case may be.

2] It is the case of the petitioner that he was appointed as Junior Engineer in Sub-Division Udgir of Zilla Parishad, Latur, under the Employment Guarantee Scheme on 08.12.1986. The services of the petitioner under the Employment Guarantee Scheme were terminated and he was appointed on 30.01.1990 as Junior Engineer under the Jawahar Employment Scheme. The petitioner approached this Court by filing Writ Petition No.369 of 1991 seeking relief of permanent absorption in the services of Zilla Parishad. On 14.08.2001, the said Writ Petition came to be disposed of. Accordingly, as per the directions of this Court, the petitioner has been permanently absorbed in the permanent employment of Zilla Parishad to the post of Junior Engineer w.e.f. 30.01.1990.

3] It is further the case of the petitioner that the Government of Maharashtra had issued a Resolution dated 29.11.1984, wherein it is mentioned that in case the Junior Engineers, who possess Diploma in Engineering, pass Examination of Association Membership of Institution of Engineering [hereinafter referred to as 'AMIE'], they would be considered as Assistant Engineers, Class-II and their earlier services to the extent of 3/8th would be considered for the purpose of fixation of seniority and deemed date. The petitioner passed examination of AMIE on 13.06.1995. Considering the date of passing examination of AMIE, the Additional Commissioner passed an order on 19.03.1999 designating the petitioner as Assistant Engineer, Class-II, w.e.f. 13.06.1995. As per the Government Circular dated 02.06.1990 and considering the date of passing of examination of AMIE and taking into

consideration the 3/8th services as Junior Engineer, the entry in the service record of the petitioner has been taken by the Zilla Parishad and the petitioner has been given deemed date as 04.04.1992.

4] It is further the case of the petitioner that the petitioner has completed more than 12 years service on the post of Assistant Engineer, Class-II, therefore, he was given time bound promotion in the higher pay scale of Rs.8000/- to Rs.13,500/-. The date of appointment of the petitioner is shown as 08.03.1999 in the seniority list published by the Government. According to the petitioner, the Government has not considered the recommendations made by the authorities of Zilla Parishad. It was specifically recommended by the Zilla Parishad to the State Government that the date i.e. 08.03.1999, has to be corrected as 04.04.1992. It was also communicated to the

State Government that the petitioner has passed examination of AMIE on 13.06.1995 and considering his earlier service to the extent of 3/8th, his date of appointment is 04.04.1992.

5] It is further the case of the petitioner that the petitioner made various applications to the authorities for correction of his deemed date of appointment as 04.04.1992 in the seniority list. Even the Chief Executive Officer of Zilla Parishad also made several communications to the Government for correction, but all in vain. The Government has not considered the case of the petitioner since beginning and mechanical exercise was made by the Government by showing the name of the petitioner at serial No.210 in Part-I of the list of Graduate Junior Engineers. On 04.02.2014, the Government issued Resolution and published a final seniority list. The name of the

petitioner is shown at serial No.210 in the list of Graduate Junior Engineers.

6] It is further the case of the petitioner that the Government has not considered the recommendations made by the Zilla Parishad. The Government has not taken into consideration the 3/8th service for calculation of seniority after obtaining degree, as observed by the High Court while disposing of the Writ Petition No.2842/2010. The decision in Writ Petition No.2842/2010 was challenged by the Government before the Hon'ble Supreme Court. The judgment in Writ Petition No.2842/2010 is upheld by the Hon'ble Supreme Court.

7] In the present case, the benefits to the petitioner by calculating 3/8th service has already been given by the Zilla Parishad and the necessary entries have been made in the service book. However, in the seniority

list, which is prepared by the Government of Maharashtra, this fact is not taken into consideration by it. Hence this Writ Petition.

8] The learned counsel appearing for the petitioner submits that the Government has not considered the recommendations made by the Zilla Parishad. He submits that the petitioner's date of appointment is shown as 08.03.1999 in the seniority list, published by the Government. In fact, the Zilla Parishad, in its recommendation, specifically recommended that the date of appointment i.e. 08.03.1999 shown in the seniority list needs to be corrected as 04.04.1992. Therefore, he submits that the Petition deserves to be allowed.

9] The learned counsel appearing for respondent no.1 filed affidavit-in-reply and stated in para 3 that the petitioner had

joined services as Junior Engineer on 12.12.1986. While the petitioner was in service, he had obtained degree of AMIE [Civil] Section 'A' and 'B' on 13.06.1995. Considering the Government Resolutions dated 29.11.1987 and 02.06.1990, the date of appointment of the petitioner for the purpose of seniority is required to be considered as 04.04.1992. According to these Government Resolutions, the 3/8th service of the petitioner has been taken into consideration for the purpose of his date of seniority.

10] It is further stated in para 4 of the reply that the petitioner filed Writ Petition No.369/1991 before the High Court, which was decided on 14.08.2001 and the liberty was granted to the petitioner to approach the State Government / Competent Authority to agitate the issue regarding seniority and consequential benefits from the initial date of appointment. It is further

stated in para 5 that the appointment of the petitioner is a regular appointment. Respondent no.1 has written a letter dated 30.07.2014, thereby requesting to grant proposal in respect of deemed date of seniority of the petitioner.

11] The learned AGP appearing for the respondent – State fairly states that the respondent – State has published the seniority list by issuing Government Resolution dated 04.02.2014, wherein the petitioner is shown at serial no. 210 and in the said seniority list, his date of appointment is shown as 08.03.1999, without keeping in view the recommendations made by respondent no.1. Therefore, he submits that this Court may pass appropriate orders.

12] We have heard the learned counsel appearing for the petitioner, the learned counsel appearing for respondent no.1 and the

learned AGP appearing for respondent nos.2 and 3. With their able assistance, we perused the pleadings in the Petition, annexures thereto, and the order passed by the Division Bench of this High Court in Writ Petition No.2842/2010 [Ashok Keshavrao Munde Vs. The State of Maharashtra and ors.], decided on 12.06.2012. Admittedly, the respondent – State Government issued a Resolution dated 04.02.2014 showing the petitioner's name at serial no.210. His date of regular appointment is mentioned as 08.03.1999. It appears that the respondent – State has not considered the recommendations made by the Zilla Parishad, wherein according to the petitioner, the date of regular appointment of the petitioner is shown as 04.04.1992.

13] In that view of the matter, without entering into more details of the case, suffice it to say that admittedly, the

Government has not considered the recommendations of the Zilla Parishad, wherein the correct date of regular appointment of the petitioner is shown and as a result, the name of the petitioner is shown at serial no. 210 in Part-I of the seniority list published by issuing the Government Resolution dated 04.02.2014.

14] In that view of the matter, the Petition is allowed in terms of prayer clause-B. Respondent no.3 is directed to reconsider the issue of seniority of the petitioner keeping in view the recommendations made by the Zilla Parishad and take decision as expeditiously as possible, however, within three months from today and communicate the said decision to the petitioner and also to the Zilla Parishad, Latur.

15] The Writ Petition is partly allowed
to the above extent and the same stands
disposed of accordingly.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE

DDC