

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8909 OF 2015**

Sandeep B. Kedar .. Petitioner.
vs.
The State of Maharashtra and ors. .. Respondents.

Mr. S.S. Deokar for the petitioner.
Mr. C.P. Yadav, AGP for respondent nos.1 to 5.
Mr. S.S. Dere, for respondent no.6.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 18 MARCH 2016

P.C.:

1] The petitioner challenges the judgment and order dated 4 August 2015 made by the Maharashtra Administrative Tribunal (MAT) dismissing Original Application No. 891 of 2014 instituted by the petitioner and nineteen others seeking *inter alia*, to challenge the constitutional validity of Rule 3 of Range Surveyor, Group-B(non gazetted), Chief Accountant, Accountant, Surveyor, Forester, Clerk-cum-typist and Forest Guard Group-C (Recruitment) Amendment Rules, 2013, to the extent, they amend Rule 7 of 2011 Rules (said Rules) and provide for filling-up 25% of vacancies to the post of Forester by nomination.

2] The petitioner contends that prior to the amendment, 100% of the posts of Forester had to be filled-in by promotion. After the amendment, the petitioner's chances of promotion have been seriously affected. The petitioner has also challenged the amended

rules, inasmuch as, it prescribes for a limited competitive examination, as well as enhanced qualification in order to eligible to be considered for nomination to 25% post of Forester. The petitioner contends that the insistence of such enhanced qualifications as well as the requirement of selection on the basis of limited departmental competitive examination, is quite harsh and unreasonable, qua the in-service candidates like petitioner. On such basis, learned counsel for the petitioner has contended that the amended rules violates the Articles 14 and 16 of the Constitution of India and the MAT has erred in not striking down the same.

3] Having heard learned counsel for the parties and perused the record, we see no reason to interfere with the impugned judgment and order dated 4 August 2015 made by the MAT.

4] In the first place, the manner in which the posts of Forester should be filled-up, is really a matter of policy as articulated through the rules framed under proviso to Article 309 of the Constitution of India. Therefore, unless it is established that there is breach of the provisions contained in Part-III of the Constitution of India or any other provisions of the statute which may be applicable, the rules cannot be struck down upon the premises the same affect petitioner's chances of promotion. In fact, mere "*chances of promotion*" is not even a condition of service.

5] Secondly, even as per the amended rules, 75% of the posts are required to be filled-in by promotion. In respect of the balance 25% posts, appointment by nomination has been permitted, provided the prescribed qualifications are attained and selection is on the basis of limited departmental competitive examination. There is nothing unreasonable or arbitrary in insisting upon such a requirement. Even where persons appointed directly or by promotion are integrated into a common clause they could, for the purposes of promotion to the next higher post, be classified on the basis of educational qualifications. There is nothing arbitrary or unreasonable to found a classification on the basis of enhanced educational qualifications. The MAT has, therefore, rightly rejected the challenge to the Recruitment Rules.

6] In this case, the petitioner, has appeared for the limited departmental competitive examination and taken his chance for selection to the 25% post of Forester. Merely because, the petitioner was unsuccessful, the petitioner cannot turn around and challenge the very requirement, by which, such examination was prescribed. The MAT, has rightly relied upon the decision of the Hon'ble Apex Court in case of *Monis Kumar Shahi Vs. State of Bihar & ors. - (2010) 12 SCC 576* to deny relief to the petitioner as well as others in similar position.

7] There is no error, much less, jurisdictional error in the impugned order. This petition is therefore, dismissed. There shall however, be no order as to costs.

8] We may record that Sudhir L. Phadke and eight others, who were also applicants in Original Application No. 891 of 2014 alongwith the present petitioner, had instituted Writ Petition No. 361 of 2016. However, they withdrew the said petition unconditionally and the same was accordingly, dismissed as withdrawn by order dated 15 March 2016.

(CHIEF JUSTICE)

(M.S.SONAK, J.)