

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2464/2016

(Maharashtra Forest Guards & Foresters Union, Nagpur and two others vs. State of Maharashtra and others)

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

Court's or Judge's order

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 Mr. N.R.Saboo, Advocate for the petitioners
 Mr. Rohit Deo, Acting Advocate General &
 Mrs. Bharati Dangre, Government Pleader for
 Respondent Nos. 1 to 3
 Mr. C.S. Kaptan, Senior Advocate with Mr K.PMahalle,
 Advocate for Respondent nos. 9,15
 Mr. A.R.Sambre, Advocate for respondent nos. 11 to 14

CORAM : **SMT. VASANTI A.NAIK &**
MRS.SWAPNA JOSHI, JJ.

DATED : **1st July, 2016**

Heard.

By this Writ Petition, the petitioners challenge the order of the Maharashtra Administrative Tribunal, Nagpur, dated 20.4.2016, dismissing the Original Application filed by the petitioners.

The petitioner no.1 is a recognised Union of Forest Guards and the petitioner nos. 2 to 4 are Forest Guards. In the year 1987, the State Government framed the Recruitment Rules for recruitment of Forest Guards and Foresters and in terms of the Rules, a vacancy in the cadre of

Forester could be filled by promotion, on the basis of seniority from amongst the Forest Guards. For appointment to the post of Forester by nomination, a candidate was required to possess Higher Secondary School Certificate. The Rules were amended in the year 2011 and all the posts of Foresters were required to be filled by promotion from amongst the suitable Forest Guards placed in the Gradation List. Three years' experience as a Forest Guard was also necessary. Rule 7 of the Rules that provides for promotion to the post of Foresters was lastly amended on 22nd October, 2013 and though all the posts of Foresters were required to be filled by promotion as per 2011 amendment, 75% of the posts were required to be filled by promotion, on the basis of seniority and 25% were required to be filled from amongst the Forest Guards, who pass the departmental examination. In view of Rule 7(2)(b) of the Rules, only the Forest Guards possessing five years' experience and a graduates Degree were entitled to appear at the departmental examination. The petitioners have challenged Rule 7(2)(b) of the amended Rules that permits only the degree-holders to appear at the departmental examination and compete for the posts in the 25% quota.

Mr. N.R.Saboo, the learned counsel for the petitioners submitted that Rule 7(2)(b) is clearly arbitrary and discriminatory, inasmuch as it creates

two classes of Forest Guards, though Forest Guards cadre has a single source of recruitment with educational criteria of Higher Secondary School Certificate only. It is stated that the minimum qualification required for appointment to the post of Forest Guards and Forester is HSSC and, if that is so, the State Government could not have created two classes in the channel of promotion to the post of Foresters, one of them, being only for the Graduates, when the minimum qualification for recruitment to the post of Forest Guards and Foresters is H.S.S. certificate only. It is stated that when an integrated cadre is created from only one source, it is not permissible for the State Government to make a classification at the promotional level. It is stated that the appointment of Forest Guards is not from two sources and the educational qualifications prescribed for appointment to the post of Forest Guard is only H.S.S.C. In this background, according to the petitioner, at the promotional level a classification could not have been made by the State Government, thereby arbitrarily and discriminatorily depriving the Forest Guards who do not possess a degree. It is stated that the degree is not a requisite qualification for appointment to the post of Forest Guards from any source and, therefore, the State Government has arbitrarily prevented the Forest Guards who do not possess the degree qualification, from appearing at the

limited departmental examination. It is stated that when the integrated cadre from which the employees are entitled to be promoted comprises of only one source, it would not be permissible for the State Government to prescribe a higher qualification at the stage of promotion, when the post of Forester is required to be filled only by promotion and not by nomination. It is stated that in the case like the one in hand, where the integrated class or cadre of Forest Guards is not drawn from different sources, the State Government could not have created two different classes at the stage of promotion. It is stated that in the circumstances of the case, rule 7(2)(b) is liable to be struck down as being arbitrary and discriminatory. It is stated that the most talented and technology-savvy Foresters could be secured by conducting a limited departmental examination for all the Forest Guards.

Shri Rohit Deo, the learned Acting Advocate General submitted that the issue involved in this case was also involved in Original Application No. 891/2014, before the Maharashtra Administrative Tribunal at Mumbai and the Tribunal had rejected a similar challenge of the applicants therein. It is stated that the order of the Maharashtra Administrative Tribunal dismissing the Original Application was challenged at the principal Seat and the Division Bench at the principal Seat has,

by the order dated 18th March 2016 dismissed Writ Petition No.8909/2015. It is stated that in view of the aforesaid, this Writ Petition is also liable to be dismissed. It is stated that Rule 7(2)(b) cannot be said to be unconstitutional as the same has been framed with the object of securing young technology-savvy Forest Guards.

Shri N.R. Saboo, the learned counsel for the petitioners states that the issue involved in this case, was not involved before the Maharashtra Administrative Tribunal. It is stated that before the Maharashtra Administrative Tribunal at Mumbai, Rule 7 (1) (b) was challenged whereas, in the instant case, Rule 7 (2)(b) is under challenge. It is stated that, before the Maharashtra Administrative Tribunal at Mumbai, it was the case of the original applicants that the State Government could not have created two classes for promotion to the post of Foresters, thereby creating a class for promotion from amongst Forest Guards, on the basis of seniority and the other class, on the basis of their success in the departmental examination. It is stated that there was no challenge before the Maharashtra Administrative Tribunal at Mumbai, in regard to the classification on the basis of the educational qualifications, while permitting the candidates to appear at the departmental examination.

We, however, find on reading of the

rejoinder filed by the applicants in Original Application No. 891/2014 that a specific challenge like the one in this case, was raised before the Tribunal at Mumbai. We find the following averments in the rejoinder filed before the Maharashtra Administrative Tribunal at Mumbai :-

“Thus, within the same cadre of Forest Guards, the Respondent No.1 has created a hostile and invidious discrimination, thereby depriving such Forest Guards to compete for the said post. This is hit by the provisions of Articles 14 and 16 of the Constitution of India. This is more so, when the Respondent No.1 has created a special class of Forest Guards with Graduate qualification within the cadre of Forest Guards. This is impermissible. That this amendment also bars permanently, not only who did not enter the Government service as Forest Guard with Graduate qualification but also bars such of them who have acquired Graduate qualification while working as Forest Guards, since what is stated in para 2.1 of the reply is that such Forest Guards should be Graduate at the time of recruitment as Forest Guards.”

In view of the aforesaid challenge, the

Maharashtra Administrative Tribunal at Mumbai decided the said issue and held that the action on the part of the State Government in depriving the Forest Guards who did not possess a degree to appear at the departmental examination was not unconstitutional. In the Writ Petition at the principal Seat, as could be gathered from the order dated 18th March 2016, it was canvassed by the counsel for the petitioners therein that the insistence of enhanced qualification is unreasonable and the Court held that there is nothing unreasonable or arbitrary in insisting upon such a requirement.

We had *prima facie* found much force in the submission made on behalf of the petitioners and hence we had called upon the respondents to defend Rule 7(2)(b) but since we find that the issue involved in this case was also involved in Writ Petition No. 8909/2015 that was dismissed at the principal Seat on 18th March 2016, it would be necessary to dismiss this Writ Petition also.

Hence, for the reasons recorded in the order dated 18th March, 2016 in Writ Petition No. 8909/2015, we dismiss the Writ Petition, with no order as to costs.

Since the appointments to the posts of Foresters are stayed on 25th August, 2015 in terms

of an interim order passed in Writ Petition No. 4853/2015, we continue the said interim relief for five weeks. Order accordingly.

JUDGE

JUDGE

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