

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1146 OF 2016

State of Maharashtra, thr. Its Principal Secretary, Irrigation Deptt. and others

-vs-

Kiran Omkar Kharat and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.S.G.Jagtap, counsel for the petitioners.
Mr.A.S.Golegaonkar, counsel for the respondents.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : 06.04.2016.

By this writ petition, the petitioners challenge the order of the Maharashtra Administrative Tribunal in the original applications filed by the respondents and directing the petitioners to consider granting appointment to the respondents as Assistant Engineers Grade-II, like the appointments granted to the non-graduate Junior Engineers that had acquired degree or equivalent qualifications while in service in terms of the Government Resolution, dated 01/03/2000 and Rule 8(b) of the 2009 Recruitment Rules. By the impugned order, the Tribunal also directed the petitioners to grant seniority to the respondents from the date of appointment with all consequential and monetary benefits.

The respondents are the degree holder engineers and were appointed as Junior Engineers in November-December, 1989 in the Irrigation Department after due selection by the Regional Subordinate Services Selection Board. On 16/04/1984 the Government issued a resolution whereby graduate Junior Engineers as well as non-graduate Junior Engineers were granted the status of Gazetted Officer Class-II (Junior). In terms of the said Government

Resolution, two cadres namely Assistant Engineer Grade-II from graduate Junior Engineer and Sectional Engineers from diploma holders and others were created. Vide Government Resolution, dated 18/09/1984, powers were granted for appointment of Assistant Engineers Grade-II on temporary/*ad hoc* basis from non-graduate Junior Engineers and they were required to appear at the competitive examination conducted by the Maharashtra Public Service Commission after securing the degrees. As per Rule 8(b) of the Rules, the respondents were required to regularize the services of the Assistant Engineers that were appointed prior to 31/12/1996 after conducting an oral or limited competitive examination to be held by the M.P.S.C. from 1997-98. The respondents filed the original application in the year 1998 seeking the regularization of their services as Assistant Engineers Grade-II. The Tribunal, by the impugned order, dated 27/08/2015, allowed the original applications filed by the respondents and issued certain directions against the petitioners. The said orders are challenged in this writ petition.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that the Tribunal was justified in partly allowing the original applications filed by the respondents. As per the amendment to the Recruitment Rules in the year 1997, those Junior Engineers that possessed the degree qualification were granted the status of Assistant Engineers Grade-II, subject to the passing of the examination conducted by the M.P.S.C. The respondents were degree holders and admittedly the respondents were appointed in the year 1989 on the post of Junior Engineers, before framing of the Rules of 1997. It was necessary for the petitioners to have conducted the examination of the respondents through the M.P.S.C. to grant the status of Assistant Engineer Grade-II to the respondents from the date of their appointment. The petitioners, however, did not permit the respondents to appear at the examinations that were conducted by the M.P.S.C. from time to time after 1997,

despite the request made by the respondents. The Tribunal, therefore, rightly held that the respondents could not have been left out by the petitioners by not providing them an opportunity to appear at the examination conducted by the M.P.S.C. in terms of the Rules of 1997 though they were degree holder engineers and their appointment was made prior to 1997. The Tribunal held and rightly so that it was necessary for the petitioners to have granted an opportunity to the respondents to claim their appointment as Assistant Engineers Grade-II after permitting them to participate in the examination and if they were successful. The Tribunal found that though such an opportunity was granted to certain other similarly situated employees, the petitioners had denied the opportunity to the respondents. The Tribunal rightly held that it would be necessary for the petitioners to consider the cases of the respondents by applying the Government Resolution, dated 01/03/2000 and Rule 8(b) of the Recruitment Rules.

Though we find that the Tribunal was justified in directing the petitioners to consider the cases of the respondents for appointment on the post of Assistant Engineers Grade-II from the date of their appointment, the Tribunal was not justified in directing the petitioners to grant the monetary benefits to the respondents from the date of their appointment. The respondents were appointed in the year 1989 and the original applications were filed by the respondents in the year 1998. It would, therefore, be necessary to hold that the monetary benefits would not be payable to the respondents, as they had approached the Tribunal after a period of nearly 9 years from their appointment. Hence, it would be necessary to modify the order of the Tribunal to the limited extent that the respondents would be entitled to the monetary benefits flowing from the orders of appointment of the respondents as Assistant Engineers Grade-II, after passing the requisite examination, from the date of filing of the original applications and not from the date of their appointment.

For the reasons aforesaid, the writ petition is partly allowed. The order of the Tribunal is hereby modified. The part of the order directing the petitioners to consider the cases of the respondents for appointment on the post of Assistant Engineers Grade-II from the date of their initial appointment in terms of the Government resolution and the Recruitment Rules stands confirmed. The part of the order directing the petitioners to grant seniority and other consequential benefits to the eligible respondents from the date of their appointments as Assistant Engineer Grade-II stands confirmed. The eligible respondents would not be entitled to the arrears of monetary benefits from the date of their appointment till the original applications were filed. It is needless to state that the monetary benefits would be payable to the eligible respondents from the date of filing of the original applications. The petitioners should immediately take steps to permit the respondents to appear at the examination conducted by the M.P.S.C. and pass appropriate orders in the matter of appointment of the eligible respondents as Assistant Engineers Grade-II from the date of their initial appointment at the earliest.

Order accordingly. No costs.

JUDGE

JUDGE