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

WRIT PETITION NO.1885 OF 2000

Balkrishna s/o Dattatraya Joshi,
Age 55 years, Occ. Service,
R/o Dhule

... PETITIONER

VERSUS

1. The Maharashtra Housing and Area Development Authority, A body Corporate, constituted under Section 3 and 4 of Maharashtra Housing and Area Development Act, 1976, through its Vice President and Chief Executive Officer, Griha Nirman Bhavan, Bandra (East), MUMBAI – 400 051
2. Secretary, Maharashtra Housing and Area Development Authority, Mumbai, Griha Nirman Bhavan, Bandra (East), Mumbai – 400 051
3. Chief Officer, Nasik Housing and Area Development Board, Under Maharashtra Housing and Area Development Authority at Griha Nirman Bhavan, Gadkar Chowk, Nasik
4. The State of Maharashtra (Copy to be served on G.P. High Court of Bombay, Bench at Aurangabad)
5. Shri S.K. Raisinghani, Executive Engineer, MHADA, Ghatkopar Board, Bombay.

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6. Shri A.N. Priyasani,
Executive Engineer,
(C-1/2 Division),
MHADA, Bombay Board
7. Shri N.V. Yerawar,
Executive Engineer,
MHADA, Nasik Board,
Nasik
8. Shri V.V. Prajapati,
Executive Engineer,
MHADA, Chembur Board,
Chembur, Bombay
9. Shri B.D. Gangurde,
Executive Engineer,
MHADA, Bandra (East),
Bombay
10. Shri S.P. Kulkarni,
Executive Engineer,
MHADA, Pune Board,
Pune.
11. Shri R.R. Chavan,
Executive Engineer (E-2),
MHADA, Bombay Board,
Bombay
12. Shri V.D. Saurkar,
Executive Engineer,
MHADA, Bombay (Urban)
Bombay
13. Shri A.P. Nalawade,
Executive Engineer (E-1),
MHADA, Bombay Board,
Bombay
14. Shri D.D. Deshpande,
Executive Engineer,
MHADA, Amarawati Board,
Amarawati

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15. Shri S.P. Astikar,
Executive Engineer,
MHADA, Pune Board,
Pune
16. Shri B.S. Sahgal,
Executive Engineer (D-1),
MHADA, Bombay Division,
Bombay
17. Shri P.K. Shendre,
Executive Engineer,
MHADA, Pune Board,
Pune.
18. Shri Gurmitsingh Dongra,
Executive Engineer (A Division),
MHADA, Bombay Board,
Bombay
19. Shri S.V. Pangarkar,
Executive Engineer,
MHADA, Bandra (East),
Bombay
20. Shri S.R. Paliwar,
Executive Engineer, (RS-3),
MHADA, Bombay Board,
Bombay
21. Shri N.R. Godare,
Executive Engineer,
MHADA (Electricity),
R/o Bandra (East), Bombay. ... RESPONDENTS

(Respondent Nos.5 to 21 deleted
as per Court's order dated 12/7/2001)

.....
Shri M.V. Deshpande, Advocate for petitioner
Mrs. Renuka Palve – Ghule, Advocate for respondents No.1 to 3
Mrs. M.A. Deshpande, Addl. G.P. For respondent No.4
.....

WITH

((4))

WRIT PETITION NO.15 OF 2004

Balkrishna s/o Dattatraya Joshi,
Age 59 years, Occ. Pensioner,
R/o Dhule

... PETITIONER

VERSUS

1. The Maharashtra Housing and Area
Development Authority, A body
Corporate, constituted under Section 3
and 4 of Maharashtra Housing and
Area Development Act, 1976,
through its Vice President and
Chief Executive Officer, Griha
Nirman Bhavan, Bandra (East),
MUMBAI – 400 051

2. The Secretary, Maharashtra Housing
and Area Development Authority,
Mumbai, Griha Nirman Bhavan,
Bandra (East), Mumbai – 400 051

3. The State of Maharashtra
(Copy to be served on G.P.
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENTS

.....

Shri M.V. Deshpande, Advocate for petitioner
Mrs. Renuka Palve – Ghule, Advocate for respondents No.1 and 2
Mrs. M.A. Deshpande, Addl. G.P. For respondent No.3

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CORAM: RAVINDRA .V. GHUGE AND
SUNIL K. KOTWAL, JJ.

DATED : 15th NOVEMBER, 2017.

JUDGMENT (PER RAVINDRA V. GHUGE, J.):

1. The petitioner, by these two petitions, prays for promotion as an Executive Engineer and all benefits, incidental and consequential thereto. So also, it is prayed that the retiral benefits be computed by considering that the petitioner has been promoted as an Executive Engineer, keeping in view that he has retired as a Deputy Engineer in 2002.

2. During the course of the extensive hearing in these two matters, we confronted the learned counsel for the petitioner that his prayers for promotion as Executive Engineer Class I w.e.f. 1.12.1996 as set out in the first petition, runs counter to his prayer in the second petition that he should be promoted to the post of Executive Engineer w.e.f. 2.12.1997. Learned counsel submits that, he would give up the prayer put forth in the second petition and would stick to the prayer put forth in the first petition. He has clarified that, the second petition was filed as subsequent events were to be brought on record and the petitioner did not want to complicate the issues in the first petition and hence, filed the second petition. He points out that, such a statement is made in paragraph No.2 of the second petition.

3. We have considered the extensive submissions of the learned Advocates for the respective sides and have gone through the record available. The petitioner was not granted any interim relief in these petitions.

4. The substantive prayer put forth by the petitioner in the first petition below clause (A) reads as under :

- (a) By issuing writ of mandamus or any other writ or direction in the nature of mandamus the respondents No.1 to 3 be directed to promote the petitioner to the post of Executive Engineer Class-I with effect from 1.12.1996 with all benefits of seniority, pay scale and other benefits as per the seniority list of Deputy Engineers dated 1.11.1996.

5. We find that, the challenge to the order of promotion dated 9.9.1997, by which 16 Deputy Engineers, purportedly junior to the petitioner, have been promoted, as set out in prayer clause (b), has been given up as prayer clause (b) has been deleted by the petitioner. Deletion has been carried out on 26.7.2001. Consequentially, the promoted employees who are at Sr.No.5 to 21 in the cause title of the petition, have been deleted by the petitioner on 26.7.2001.

6. The undisputed factors emerging from the submissions of the learned Advocates and the record, can be summarised as under :-

- (a) The petitioner joined the Maharashtra Housing Area Development Authority, commonly known as 'MHADA', in 1965 as a Junior Engineer when he possessed the Diploma of Civil Engineering.
- (b) On 6.8.1980, he was promoted to the post of Deputy Engineer, which was a Class II post.
- (c) This Court at Bombay, in Writ Petition No.390/1990, directed the respondent establishment to prepare a common seniority list for the entire Department.
- (d) A fresh seniority list, in deference to this Court's order, was published on 1.11.1996 and the petitioner stood at Sr.No.99.
- (e) By the end of 1996, owing to several seniors being promoted, the petitioner stood at Sr.No.2 in the seniority list.
- (f) On 30.7.1996, the petitioner was transferred from Dhule to Pune.
- (g) Record reveals that, he did not join at his transferred

place at Pune.

- (h) In December 1996, one post of Executive Engineer became available at Nasik.
- (i) The Administrative Officer of MHADA, Nasik Region, informed the Secretary of MHADA, Mumbai by communication dated 19.12.1996 that though the petitioner is senior amongst the available Deputy Engineers at Dhule, he cannot be considered for taking over the adhoc charge of Executive Engineer at Nasik since he has already been transferred to Pune.
- (j) A Government Resolution dated 21.2.1994 was introduced by the General Administration Department of the Government of Maharashtra for formalising the factors to be considered for granting promotions to the position of Executive Engineer by considering the 5 years confidential reports of the eligible candidates.
- (k) A further Government Resolution was introduced on 22.9.1994, taking into account the earlier Government Resolution, for setting forth the specific factors that are to be considered for grant of promotion to the position of Executive Engineer.
- (l) By order dated 23.7.1997, the post of Deputy Engineer was upgraded from Class II to Class I and the

petitioner, though a Deputy Engineer, was brought into the Class I cadre, to which the post of Executive Engineer belongs, in the scale of Rs.3200-100-3500-125-4625.

- (m) The petitioner contents that, the post of Executive Engineer has fallen vacant from December 1996 and hence, he should be granted deemed promotion from the said date and owing to his retirement, he should be paid all his service benefits, which are available to an Executive Engineer.
- (n) The petitioner has made several representations to the respondents praying for consideration of his claim to the post of Executive Engineer.
- (o) By communication dated 16.8.1997, he was informed that his representation addressed to the Hon'ble Minister of Housing Development, dated 29.7.1997 cannot be considered as he was junior and he could not be considered out of turn for being promoted as an Executive Engineer.
- (p) By order dated 9.9.1997, 17 Deputy Engineers from different regions, based on the common seniority list, were promoted as Executive Engineers in different Departments.

- (q) The petitioner concedes that, the first four persons in the promotion list dated 9.9.1997 are senior to him and the Deputy Engineers at Sr.No.5 to 17 are junior to him.
- (r) The purported junior Engineers from Sr.Nos.5 to 17, who were arrayed in this petition as respondent Nos.5 to 21, have been deleted and the challenge to the order of promotion dated 9.9.1988 has been given up by the petitioner by deleting the prayer clause (b) as noted above.
- (s) The petitioner has prayed that, the Circular issued by MHADA, dated 20.11.1989, based on the Government Resolution dated 9.9.1988, applying the norms of promotion to MHADA, should be considered while considering the claim of the petitioner for promotion.
- (t) Learned Advocate for MHADA submits that, the Government Resolutions dated 21.2.1994 and 22.9.1994 introduced by the General Administration Department, State of Maharashtra with regard to granting promotions to the post of Executive Engineers, need to be followed.
- (u) The petitioner has gathered information under the Right to Information Act from the State Public Information Officer, by communication dated 8.3.2007, that even if

a person has acquired "B" Grade for three years out of the five years, he would be treated as having acquired the average of B⁺, thereby making him eligible for promotion.

- (v) The petitioner has placed reliance upon the judgment of this Court, dated 31.8.1998, delivered at the principal Seat at Bombay, in the matter of Vrajlal Vanmali Prajapati Vs. The Maharashtra Housing & Area Development Authority, Bombay & others (Writ Petition No.387/1989).

7. Upon considering the submissions of the learned Advocate, and the admitted factors as above, though much ado has been voiced about the transfer of the petitioner from Dhule to Pune, we do not find that the said issue has any nexus with the claims made by the petitioner before us. Nevertheless, in order to avoid ignoring the said issue, we are dealing with the same in brief.

8. The petitioner contends that, though he was transferred on 30.7.1996 from Dhule to Pune, he was never relieved from his position at Dhule. Learned counsel for MHADA contends that, the petitioner refused to join at Pune. We have

perused the order dated 30.7.1996, and we find that the petitioner, posted at Dhule falling in the Nasik MHADA Range, was transferred to Pune and Shri A.S. Bankar from Pune had joined in his place at Dhule. The transfer order specifically indicates that, all the 30 Deputy Engineers transferred were not given any joining time, and these officers, under transfer orders, were relieved immediately. The petitioner, therefore, cannot contend that he was not relieved and, therefore, he continued at Dhule and hence, he had made a representation on 26.11.1996.

9. The bone of contention/ contentious issue before us is as to which Government Resolution would be applicable to the case of the petitioner. The petitioner has heavily relied upon the Circular of MHADA, dated 20.11.1989, as being applicable to him when the order of promotion dated 9.9.1997 was issued, by which the petitioner was ignored. MHADA has contended before us that, the Government Resolution dated 21.2.1994 and 22.9.1994, are applicable, as MHADA is governed by the Government Resolutions issued by the General Administration Department, State of Maharashtra.

10. We are, therefore, considering the case put forth by the petitioner at its best. To test his contentions, we are

scrutinising the case of the petitioner under the Circular dated 20.11.1989, which according to him, is applicable to his case. It needs mention that, the gradation for a period of 5 years depending upon the confidential reports of the candidates is the same, be it under the MHADA Circular dated 20.11.1989 or the two Government Resolutions dated 21.2.1994 and 22.9.1994, which are as under :-

Outstanding	:	A ⁺
Very Good	:	A
Positively Good	:	B ⁺
Good	:	B
Average	:	B ⁺⁺
Below Average	:	C

11. On the one hand, the petitioner has contended that he would be covered by clause (3) of the Circular dated 20.11.1989 which reads as under :

३) वर्ग २ मधून वर्ग १ मध्ये पदोन्नती

अ) मागील पाच वर्षांच्या गोपनीय अहवालांपैकी सर्व "ब" किंवा त्यावरील दर्जाचे असतील तर १० (दहा) गुण पदोन्नतीच्या पात्रतेसाठी आवश्यक राहतील अन्यथा १२ (बारा) गुणांची आवश्यकता राहिल.

ब) मागासवर्गीय अधिकाऱ्यांच्या बाबतीत मागील पाच

वर्षाच्या गोपनीय अहवालांपैकी सर्व "ब" किंवा त्यावरील दर्जाचे असतील तर ९ (नऊ) गुण पदोन्नतीच्या पात्रतेसाठी आवश्यक राहतील अन्यथा ११ (अकरा) गुणांची आवश्यकता राहिल.

12. As on 9.9.1997, when the promotion order was issued, causing grievance to the petitioner, he was already upgraded to Class I post though he was a Deputy Engineer, by virtue of the order dated 23.7.1997. He was, therefore, occupying the post of Class I. As such, clause (3) in Marathi reproduced above, which is applicable to the promotions from Class II to Class I, would not be applicable to the petitioner as he was already in Class I.

13. On the other hand, the petitioner has contended, in the alternative, that he would then fall in clause (4) of the MHADA Circular dated 20.11.1989, which reads as under :-

४) वर्ग १ मधून वरिष्ठ दर्जाच्या वर्ग १ मध्ये पदोन्नती

मागील पाच वर्षांच्या गोपनीय अहवालांपैकी सर्व "ब" किंवा त्यावरील दर्जाचे असतील तर १२ (गुण) पदोन्नतीच्या पात्रतेसाठी आवश्यक राहतील. तसेच एक "ब" व अन्य त्यावरील असतील तर १४ (चौदा) गुण पदोन्नतीच्या पात्रतेसाठी आवश्यक राहतील. अन्यथा १५ (पंधरा) गुणांची आवश्यकता राहिल.

14. Clause (4) in Marathi reproduced above is with regard to promotions from Class I to the higher stage in Class I. The petitioner undisputedly is in Class I and his promotion as a Deputy Engineer to the post of Executive Engineer would be a promotion to a higher grade in the same class. For the said purpose, the norms prescribed based on the 5 years confidential reports are as follows :-

- (a) A candidate, who has all five B Grades or 5 higher grades for all the 5 years, he should notch 12 marks.
- (b) A candidate, who has only one B Grade and 4 Grades are above B, he should notch 14 marks.
- (c) In any other case, the candidate must score 15 marks.

15. The petitioner has not acquired 5 Grade B in all the 5 years. It is also not his case that he has acquired one B Grade and 4 higher grades. Admittedly, the petitioner has scored two B Grades in the years 1991-1992 and 1992-1993, B⁺ in 1993-1994, A in 1994-1995 and B in 1995-1996. As such, he has a total of 13 marks.

16. We make it clear that, we are considering the case of

the petitioner on the basis of the typed copy of the Circular dated 20.11.1989, issued by the MHADA. Since the petitioner has not acquired a "B" or higher Grade in all the 5 years and has not acquired one B Grade and 4 Grades higher than B in the 5 years, going by Clause (4), which is a typed version of the petitioner, he would not be covered by any of the said two categories. As such, we are left with the third category of those candidates not falling in the first two, who should have acquired 15 marks for being eligible for promotion.

17. The Marathi clause (4) "A" reproduced above talks of identical 5 grades in the confidential years of 5 years keeping in view the words used "मागील ५ वर्षांच्या गोपनीय अहवालांपैकी सर्व "ब." It is further provided : "किंवा त्यावरील दर्जाचे असतील तर १२ गुण पदोन्नतीच्या पात्रतेसाठी आवश्यक राहतील", which means, all 5 grades above "B" meaning either "B⁺" or "A" or "A⁺". Since the petitioner has scored B, B, B⁺, A and "B" in the last 5 years before the revised date, he would not be covered by the said contingency.

18. As such, the petitioner is, therefore, required to score 15 marks if he has acquired assorted Grades in the last 5 years. There is no dispute that, the petitioner has scored 13 marks as

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two marks are allotted to B Grade, 3 marks to the Grade B⁺, 4 marks for A and 5 marks for the Grade A⁺. On this score of the petitioner, he was not entitled to be considered for promotion even as per the Circular dated 20.11.1989, which he says, is applicable to him.

19. The petitioner has contended that, the communication by the State Public Information Officer, dated 8.6.2003, assists him in bringing his total to B⁺, which is 15 marks. We find from the said communication that, those candidates who have scored B⁺ Grade in 3 confidential reports and have scored two B Grades, the average will be taken as being B⁺ Grade. The contention of the petitioner is fallacious since the petitioner has scored 3 B Grades, as noted above and has scored only one B⁺ Grade and one A Grade. Hence, the said information supplied to the petitioner does not assist him.

20. In the light of the above, the petitioner fails on his own contention as regards the applicability of the Circular dated 20.11.1989.

21. We have tested the case of the petitioner in the light

of the Government Resolution dated 21.2.1994 and 22.9.1994. The learned counsel for the MHADA has made a statement, on instructions, that MHADA automatically brings into effect the Government Resolutions pertaining to the promotion rules, as are introduced by the General Administration Department, State of Maharashtra. It does not introduce any Government Resolution on behalf of MHADA. All Government Resolutions introduced by the State, are made applicable to MHADA, concerning the service conditions of the employees.

22. Without dealing with the controversy as to whether such Government Resolutions pertaining to promotional policies can become automatically applicable to MHADA, and no such Circular is required to be introduced by MHADA, we are considering the contentions of MHADA in the light of the affidavit-in-reply filed.

23. By the Government Resolution dated 21.2.1994, those employees in the Class I category who have reached the minimum pay scale of Rs.5100/-, can alone be held entitled for promotion to the post of Executive Engineer. Insofar as the gradation like A⁺, A, B⁺, B, B⁻ and C, are concerned, there is no difference in between this Government Resolution and the

Circular issued by MHADA on 20.11.1989, which we have considered hereinabove. As such, by the Government Resolution dated 21.2.1994, the petitioner is not entitled to promotion as he had not achieved the minimum pay-scale of Rs.5100/-. As noted above, he was in the Class I category, with the scale where the maximum pay was Rs.4625/-.

24. Insofar as the Government Resolution dated 22.9.1994 is concerned, even the said Government Resolution would render the petitioner eligible for being considered for promotion if he has not reached the minimum pay scale of Rs.5100/-. If this condition is fulfilled, the petitioner has to achieve an average of B⁺ Grade in 5 years. B⁺ Grade requires a total marks of 15 as a qualifying condition for being considered for promotion as an Executive Engineer. Even on this count, the petitioner does not fulfill the said condition.

25. Insofar as the grievance of the petitioner is concerned, that the Circular issued by MHADA, dated 23.10.1997 cannot be made applicable to the petitioner as his cause of action originates on account of his supercession by order dated 9.9.1997, we find that the said Circular is issued by MHADA keeping in view the earlier Government Resolution dated

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9.9.1988, Circular of MHADA dated 16.5.1988 and the further Circular of MHADA, dated 20.11.1989, which Circular, the petitioner claims, to be applicable to him. Even on this count, we are not required to deal with the eventuality of the applicability of the said Circular dated 23.10.1997 since the petitioner claims that, that Circular should never be made applicable to him as his grievance dates back to 9.9.1997 and also for the reason that the petitioner fails even on the basis of his own contention that the Circular dated 20.11.1989 is applicable to him.

26. Considering the above, the first petition filed by the petitioner fails and the same is, therefore, dismissed. Rule is discharged.

27. Since the second petition is connected with the first petition, and keeping in view that the petitioner has made a statement that the prayer put forth in the first petition be considered, the second petition is also devoid of merit and is, therefore, dismissed. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

fmp/