

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3643 OF 2009

Mukund S/o Shankarlal Daima,
Age : 57 years, Occu. Service,
presently working as Assistant
Sub Inspector of Police Wireless
(Radio Mechanic), Aurangabad Rural,
Aurangabad

.. PETITIONER

VERSUS

01. State of Maharashtra through
its Secretary, General Administration
Department, Mantralaya, Mumbai - 32

02. The Secretary,
Home Department, Govt. of
Maharashtra, Mantralaya,
Mumbai

03. The Director General of Police,
Maharashtra State, Mumbai

04. The Additional Director General of
Police and Director General of Police,
Wireless, Maharashtra State, Pune

05. Shri Ingle Dhananjay Somnath,
Age : 41 years, Occu. Service,
Police Wireless Sub Inspector (Engg.),
R. & D., Pune

06. Shri Shirish S/o Nagnath Jadhav,
Age : 41 years, Occu. Service,
Police Wireless Inspector (Engg.),
Rural, Pune

07. Shri Anilkumar Ramlalji Sakhre,
Age : 45 years, Occu. Service,
Police Wireless Inspector (Engg.),
Aheri, District Gadchiroli

.. RESPONDENTS

...
Mr. S.R. Barlinge, Advocate for petitioner
Mr. S.N. Morampalle, A.G.P. for respondent-State
...

CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, JJ.
DATE : 21-11-2017

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. By consent, the Petition is heard finally.

2. The question that may be required to be dealt with in this Writ Petition is, as to whether inaction to move on the decision of Government taken way back around 1977 to exempt persons of 45 years of age from passing departmental examinations for their further promotions, directing the departments of the State to carry out suitable amendments to the rules, shall keep back the benefits of such decision to petitioner who was working in the Wireless Section of Police Department, when the benefits having been given to employees of almost all departments of the State, and whether impugned order in present writ petition would be justifiable, as Administrative Tribunal has passed orders which are apparently divergent in nature.

3. In the case of Civil Engineering Assistants, the tribunal had allowed exemption from passing qualifying examination for their further promotions despite there being no amendment to the rules and in the present case, similar request being declined to the petitioner, disregarding the general instructions of department rather falling oblivious of the emerging situation since directions have been issued by the State Government from time to time from 1977 onwards.

4. In order to appreciate the matter in its proper context, succinct reference to a few facts may be necessary.

5. Petitioner had been appointed as Assistant Police-Sub-Inspector in Wireless Section of Police Department in 1980. He had passed Class IV examination of department in 1988 and class III examination in 1990. Due to some unavoidable factors, he could not appear at class II and class I examinations of the department.

6. Before petitioner had entered services in Wireless section of the Police department of the State, in November, 1977, Government of Maharashtra had issued a resolution dated 01-11-1977 through its General Administration Department directing all the departments of the State to suitably amend the rules, both

for continuation and confirmation and also for promotion to higher posts, providing for exemption to employees from passing departmental examinations on attaining 45 years of age by the Government servant in the existing post with a rider that the seniority would not be restored, if lost by such Government servant in the process, for non-passing of the departmental examination within the prescribed time-limit and number of chances permissible. After 1977, the Government of Maharashtra had issued another resolution on 28-11-1979 and, thereafter, had issued a Circular to the similar effect in 1980.

7. The petitioner on attaining age of 45 years in 1996, had requested the departmental authority for promotion. The request, however, had been declined considering that the resolutions and circulars would not be applicable to technical posts. The petitioner, thus, had been before the Maharashtra Administrative Tribunal under an Original Application bearing no. 749 of 2008. The tribunal had considered that the Government resolution directs to suitably amend the departmental examination rules providing exemption from passing examination on attaining age of 45 years and the Home department had not carried out any amendment to the rules for promotion. One of the higher official, it appears, had considered that post held by petitioner i.e. Assistant Sub Inspector of Police

Wireless being in a technical section, exemption may not be advisable from passing the departmental examination only for the reason the Government servant attains age of 45 years.

8. The Tribunal also appears to have further considered a communication of 2008 to the aforesaid effect had also been issued by Desk Officer of Home Department that passing of examination of class IV to Class I was necessary and since he had not passed the same, he would also not be considered for time bound promotion. With reference to aforesaid, it appears that the Tribunal had declined to accept the request made under the Original Application and, thus, the petitioner is before this Court.

9. Learned counsel for petitioner Mr. Barlinge submits that treatment meted out to petitioner and similarly placed persons of the Wireless Section of the department is discriminatory and causes invidious discrimination among the employees of different departments of the State as well as Wireless Section.

10. Learned counsel submits that General Administration Department's resolution has been followed in all the departments of the State giving the benefit of exemption from passing departmental examination on attaining 45 years except the Wireless section of Police department. This has been followed in Engineering

department, Irrigation department as well as Public Works department. While employees in Public Works department had taken up proceedings therefrom before the Maharashtra Administrative Tribunal, the Tribunal had directed to give benefit of Government Resolutions and subsequent communications to Engineering Assistants for their further promotion on attaining 45 years. Moreover, decision in Original Application in aforesaid case, had been challenged before this Court, Nagpur Bench in Writ Petitions bearing no. 6212 of 2011 along with companion writ petitions. The Division Bench vide order dated 09-11-2011 has clearly observed that,

" The decision of the General Administration Department would be binding on all other departments of the State Government including Public Works Department. "

Further, it has observed that,

" another department of the same Government cannot be permitted to take a different stand and say that the directions of the General Administration Department are not binding on it. "

11. He submits that not only the decision of the Tribunal had been challenged before High Court but also the department had gone further before the Apex Court against aforesaid decision of Division Bench and challenge before Supreme Court had failed and the Special Leave Petitions were dismissed. He, therefore, submits that Tribunal's decision in petitioner's case in aforesaid background is untenable. He submits that the Tribunal has committed a grave

error without taking into account the decision taken by General Administration Department making the same applicable across all the departments of the State Government, directing suitable amendments without any discrimination and further categorization.

12. He, therefore, submits that inaction of the department in not suitably amending rules giving exemption to persons attaining 45 years of age, had been causing grave injustice to petitioner and similarly placed persons in Wireless section of the Police department. He, therefore, urges that writ petition be allowed and the petitioner be given benefit of promotion on attaining age of 45 years by giving him exemption from passing the departmental examination along with all other consequential, incidental and ancillary benefits.

13. Learned A.G.P. Mr. Morampalle, appearing for respondent submits that the rules do not accommodate the petitioner's case for promotion since he has not passed Class I and Class II examination. He submits that the post held by the petitioner is of technical nature and, as such, it is not advisable to give exemption pursuant to the resolution passed by General Administration Department. He submits that when the rules are governing the field, the general directions issued will have to cede to the rules.

14. During the course of hearing, learned counsel Mr. Barlinge has tendered across Government resolution dated 31-07-2013 issued by Public Works Department of the State of Maharashtra carrying out suitable amendments exempting employees from passing departmental examination for promotion on attaining age of 45 years keeping in view the order passed by the Maharashtra Administrative Tribunal dated 04-02-2011 and the order passed by High Court in Writ Petitions referred to above as well as instructions issued by Government in November, 1979 and December, 2008.

15. As such, it appears that the Civil Engineering posts which are also technical posts, the Public Works Department has considered it appropriate to take into account various instructions issued by the Government as well as orders of this Court and suitably amend the rules making way for exemption to persons attaining age of 45 years from passing departmental examination.

16. While passing the order, the Tribunal in the present matter, appears to have fallen oblivious of the intention of the State Government that a beneficial measure is required to be taken in the cases of age old employees for their betterment in service conditions by exempting them from passing departmental examination for

promotion. Said directions and instructions have been issued to all the departments in the State and Police department had not been excluded.

17. It has been argued on behalf of petitioner, even in the Police department, save Wireless section, the General Administration Department's directions and instructions have been applied and quite a few persons have been given promotions who have attained age of 45 years without requiring them to pass departmental examination for promotion. This particular aspect has not been met with by any counter argument on behalf of the respondent. Further, benefit of promotions appears to have been given to quite a few departments of the Government including Engineering department, as referred to above without there being suitable amendments to promotional rules. Thus, it appears that so far as Wireless section of Police department is concerned, the authorities are taking a rather hyper-technical view under the plea that as the rules have not yet undergone amendment pursuant to the instructions issued thus far. The Tribunal's order in the present case, particularly looking at that another technical post has been given benefit of decision of Government's refusal to extend the same to petitioner who was working in Wireless Section of Police Department of the State is unjustifiable.

18. In the circumstances, we consider it expedient to follow suit in the decision given by Division Bench in Writ Petitions no. 6212 of 2011 and other companion matters. Having regard to observations therein, that decision of General Administration Department of Government would be binding on all departments of the State and a department of Government would not be permitted to take a different stand as it appears only 'Wireless Section' of Police Department has not been extended the benefit.

19. In view of aforesaid, it would be appropriate that the petitioner employed in Wireless Section of Police department is given benefit of promotion to the next level post without insisting upon departmental or class I and II examination, on attaining age of 45 years by giving deemed date of promotion. Since it is stated that petitioner is no longer in service having retired on superannuation, as such, he shall be given deemed date of promotion from the date of promotion of his junior, along with all consequential benefits.

20. Writ Petition, as such, is allowed in terms of prayer clauses (B) and (C).

21. Impugned order dated 26-02-2009 in Original Application no. 749 of 2008 passed by Maharashtra Administrative Tribunal, Mumbai is set aside.

22. It is expected that benefits under this decision would be given to the petitioner within a period of three months from date of receipt of writ of this court.

23. Rule is made accordingly made absolute.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/