

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD.**

**CIVIL APPLICATION NO. 12122 OF 2017**

**IN**

**WRIT PETITION NO. 4284 OF 2010**

**WITH**

**CIVIL APPLICATION NO. 1028 OF 2013**

**CIVIL APPLICATION NO. 4396 OF 2014**

**CIVIL APPLICATION NO. 12123 OF 2017**

**IN**

**WRIT PETITION NO. 4284 OF 2010**

The State of Maharashtra  
and others.

Applicants.

Versus

Dhanshiram Tulshiram Shipne  
and others.

Respondents.

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Mr. V.J. Dixit, Senior Counsel for applicants.

Mr. V.D. Salunke, Senior Advocate for respondent  
No.1.

Mr. A.S. Deshpande, Advocate for respondent Nos.3  
to 5 and 9 to 12.

Mr. A.G. Sangle, Advocate for respondent No.2.

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**CORAM : R.D. DHANUKA &  
SUNIL K. KOTWAL, JJ.**

**Dated : 26-09-2017.**

**ORAL ORDER :-**

1. By this Civil Application, the applicants pray for stay of the order dated 07.04.2010 passed by the Maharashtra Administrative Tribunal in Original Application No. 938/2009 and also seek stay of cap on promotion to the posts of Executive Engineer to the extent of 153 posts of Assistant Engineer Grade-I and making reversion of persons who have been given *ad hoc* promotion from Assistant Engineer Grade-I beyond the cap of 153.

2. Respondent No.1 was the original applicant before the Maharashtra Administrative Tribunal and had prayed for an order and direction to the respondents therein to give him *ad hoc* promotion to the post of Executive Engineer by complying with the Resolutions dated 19.12.1970 and 26.10.2004 on various grounds. By an order dated 07.04.2010, Maharashtra Administrative Tribunal directed respondent Nos.1 to 4 therein i.e. State Government and others to restore the balance in the three feeder cadres of Assistant Engineer Grade-I, Sub-Divisional Engineer and Sub-

Divisional Officer by maintaining ratio of 25:25:10 between those three cadres while filling up short fall in the feeder cadre of Assistant Executive Engineer. It was made clear that the said order would involve reversion of those, who had been given excess ad hoc promotion from Assistant Engineer Grade-I cadre beyond the figure of 153 and the balance should be restored as early as possible, and in any case within the period of six months.

3. Being aggrieved by that order passed by Maharashtra Administrative Tribunal, the State Government preferred Writ Petition No. 4284/2010 in this Court. One of the other employee, who was affected by the said order passed by Maharashtra Administrative Tribunal, assailed the said impugned order by filing Writ Petition No.3971/2010. On 30.04.2010, the Division Bench of this Court passed an order in the said Writ Petition No. 3971/2010 permitting the State Government to carry out the exercise as directed by Maharashtra Administrative Tribunal at

paragraph 13 of the said order. However, this Court made it clear that the effect to the order of Tribunal should not be given until further orders, which would result in reversion of other employees. The said ad-interim order was continued by this Court from time to time. In view of the ad-interim order passed by this Court in Writ Petition No.3971/2010, no separate ad-interim relief was granted by this Court in Writ Petition No. 4284/2010.

4. Mr. V.J. Dixit, learned Senior Counsel for the applicants invited our attention to the impugned order passed by Maharashtra Administrative Tribunal and the earlier orders passed by this Court from time to time in the Writ Petitions. He submits that in the Irrigation Department there are four feeder cadres namely Assistant Executive Engineer, Assistant Engineer Grade-I, Sub-Divisional Engineer and Sub-Divisional Officer, who are eligible to be promoted to the post of Executive Engineer. Various service tenure is provided under those

Rules for the purpose of eligibility to get promoted to the post of Executive Engineer. Different ratio is prescribed for promotion from these four cadres to the post of Executive Engineer.

5. It is submitted by the learned Senior Counsel that in view of the directions of the Maharashtra Administrative Tribunal, the State Government has not promoted even a single candidate from feeder cadre of Assistant Engineer Grade-I to the post of Executive Engineer from 2010-2011 till 2013-2014. The cap of 159, 153 and 62 candidates for Assistant Engineer Grade-I, Sub-Divisional Engineer and Sub-Divisional Officer has been maintained. He submits that due to the cap imposed by Maharashtra Administrative Tribunal of 153 candidates at Executive Engineer level of Assistant Engineer Grade-I, the Government is not able to give 25% quota of vacancies admissible to Assistant Engineer Grade-I as per Rule framed in 1970 and 1983.

6. It is submitted by the learned Senior Counsel that now 60 *ad hoc* posts and 90 regular posts of Engineers are vacant, which are not being filled up in view of the cap of 153 posts imposed by the Maharashtra Administrative Tribunal. The petitioners are injuncted from filling up the said posts. He submits that there are no eligible candidates from the feeder cadre of Sub-Divisional Engineer and Sub-Divisional Officer now, and for further period of two years i.e. upto September 2019. He further submits that all the candidates from Assistant Executive Engineer cadre are not likely to be available before 2021.

7. Learned Senior Counsel submits that these posts would, thus, remain vacant unless and until the eligible candidates from the Assistant Engineer Grade-I cadre are promoted. It is submitted by the learned Counsel that the Government has undertaken Irrigation and Drinking Water Projects, which are to be completed within the time bound period and thus it becomes

absolutely necessary and urgent to fill up these important posts of Executive Engineer by promoting the candidates from other cadre.

8. It is submitted by learned Senior Counsel that in so far as respondent No.1, who was the original applicant before the Maharashtra Administrative Tribunal is concerned, in view of the order passed by Maharashtra Administrative Tribunal, the respondent No.1 was already promoted to the post of Executive Engineer and has retired on 31.12.2016. He submits that in view of these facts, if the impugned order passed by Maharashtra Administrative Tribunal is stayed as prayed in terms of prayer clauses (A) and (B) in this Civil Application, respondent No.1 would not be affected in any manner, whatsoever.

9. Learned Senior Counsel submits that if the impugned order passed by Maharashtra Administrative Tribunal is stayed as prayed by the applicants, this Court can direct the applicants

to inform the candidates while promoting them, that their appointments would be subject to the outcome of this Writ Petition and in the event of the requisite candidates from the feeder of Assistant Executive Engineer Grade-I are available during the pendency of this Writ Petition, the promoted candidates will have to be reverted.

10. Mr. Deshpande, learned Counsel for the interveners/some of the respondents also invited our attention to the order passed by Maharashtra Administrative Tribunal and supported the application of the State Government and would submit that by virtue of the order passed by Maharashtra Administrative Tribunal as well as the order passed by this Court, large number of vacancies are not being filled up by the State Government, which causes difficulty in implementing the Government project by the applicants.

11. Mr. V.D. Salunke, learned Counsel for

respondent No.1, on the other hand, submits that the petitioners in the Writ Petition had already prayed for grant of stay of the order passed by Maharashtra Administrative Tribunal in the Writ Petition which prayer was not granted by this Court while admitting the Writ Petition. Only a limited interim relief was granted. He submits that Civil Application, seeking stay of the impugned order passed by the Maharashtra Administrative Tribunal for the similar relief is thus not maintainable and deserves to be dismissed.

12. The next submission of the learned Counsel for respondent No.1 is that since directly or indirectly the applicants are seeking modification and/or review of the order dated 30.04.2010 passed by Division Bench of this Court in Writ Petition No. 3971/2010, the matter shall be heard by the same Bench if available today.

13. Mr. Dixit, learned Senior Counsel for the

applicants, in re-joinder, submits that by this Civil Application, the applicants are not seeking any review of the order dated 30.04.2010, but are seeking stay of the impugned order passed by the Maharashtra Administrative Tribunal in view of the change in circumstances and in view of subsequent development in the matter.

14. It is not in dispute that the Maharashtra Administrative Tribunal, in the impugned order, had issued various directions and had imposed cap of 153 posts. The Maharashtra Administrative Tribunal had directed the State Government to restore the balance in the three feeder cadres of the Assistant Engineer Grade-I, Sub-Divisional Engineer and Sub-Divisional Officer in the ratio of 25:25:10 between those cadres. The Division Bench of this Court on 30.04.2010 though directed the State Government to carry out the exercise as directed by the Tribunal, it was made clear that the effect to the order of the Tribunal should not be given until further orders.

15. It is, thus, clear that in view of the limited interim relief granted by this Court by the order dated 30.04.2010, the State Government could not make any promotion to the post of Executive Engineer during the period 2010-2014 from amongst the Assistant Engineer Grade-I. We are inclined to accept the submission made by learned Senior Counsel for the applicants that since there are no eligible candidates from the feeder cadre of Sub-Divisional Engineer and Sub-Divisional Officer now, which position would continue for another period of two years and since all the candidates from Assistant Executive Engineer cadre are not likely to get available before 2021, the Irrigation and Drinking Water projects being undertaken by the Government, would seriously suffer. In our view, the applicants have thus made out a case for grant of interim stay of the impugned order of Maharashtra Administrative Tribunal with certain modifications.

16. In so far as the respondent No.1 is concerned, it is not in dispute that he was granted promotion to the post of Executive Engineer in the year 2011 pursuant to the order passed by Maharashtra Administrative Tribunal and has already stood retired on 31.12.2016.

17. In so far as the submission of the learned Counsel for respondent No.1 that this Civil Application for seeking stay of the impugned order passed by Maharashtra Administrative Tribunal is not maintainable on the ground that the interim relief as prayed in the Writ Petition was not granted by this Court is concerned, a perusal of the order dated 30.04.2010 indicates that this Court though had directed the Government to carry out the exercise as directed by the Tribunal in its order has further directed that the effect to the order of Tribunal should not be given until further orders. The said order continues to be in force.

18. In view of the circumstances stated aforesaid, in our view the applicants cannot be prevented from making fresh application for grant of stay of the impugned order passed by the Maharashtra Administrative Tribunal in view of the change in circumstances and in view of subsequent development. The effect of the impugned order passed by Maharashtra Administrative Tribunal is very drastic, thereby preventing the applicants to promote the suitable candidates for the post of Executive Engineer other than the particular feeders described in the said order, most of which are not available. By virtue of the said order passed by Maharashtra Administrative Tribunal, the public interest would be seriously affected. Irrigation and Drinking Water Project proposed to be started by the applicants would be seriously affected. There is, thus, no merit in the submission of the learned Counsel for respondent No.1 that this Civil Application is not maintainable.

19. In so far as second submission of the learned Counsel for respondent No.1 that Civil Application shall be heard by the same Division Bench which had passed the earlier order if available is concerned, in our view this submission of learned Counsel is also without any merit. The applicants are not seeking any review of the order dated 30.04.2010 passed by Division Bench of this Court. This Civil Application, in our view, thus, can be heard by this Bench, who is assigned these matters.

20. We are, thus, inclined to grant stay to the impugned order passed by Maharashtra Administrative Tribunal with the following modifications. We, therefore, pass the following order.

**ORDER**

- (a) Civil Application No. 12122/2017 is made absolute in terms of prayer clause (B).

(b) It is, however, made clear that all the promotions which are to be made by the applicants under this order shall be subject to outcome of Writ Petition No.4284/2010 and Writ Petition No. 3971/2010. The candidates, who are promoted to the said post of Executive Engineer, shall be informed about this order passed by this Court and their promotion would be subject to the outcome of this petition.

(c) It is also made clear that if any candidates from the cadre of Assistant Executive Engineer Grade-I are available during pendency of this Petition for the purpose of getting promotion to the post of Executive Engineer as directed by the Maharashtra Administrative Tribunal, to that extent the candidate, who is granted promotion to the post of Executive Engineer pursuant to this order, shall be reverted.

(d) It is made clear that in so far as

the respondent No.1 is concerned, though he is retired from the service, if Writ Petition No.4284/2010 and Writ Petition No. 3971/2010 are dismissed by this Court, the rights and entitlement of respondent No.1 if any would be considered by this Court at the stage of final disposal of the Writ Petitions and are not affected by this order.

- (e) Civil Application No. 12122/2017 is disposed of in aforesaid terms.
- (f) Parties to act on the authenticated copy of this order.

**( SUNIL K. KOTWAL )**  
**JUDGE**

**( R.D. DHANUKA )**  
**JUDGE**

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