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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1944 of 2014.

Mr. Harekrishna Kalaji Teli,
202, Nilkanth Valley- “F”,
Lal Chowki, Kalyan (East)
Thane and others

..Petitioners.

Versus.

- 1) State of Maharashtra
- 2) Kalyan Dombivali Municipal Corporation,
Kalyan, Through : Its Commissioner ..Respondents.

WITH

WRIT PETITION No. 1945 of 2014.

Mr. Anil N. Bande,
406, Matroshi Darshan,
Jarimari Gate, Behind Tisai
Hospital, Teesgaon, Kalyan (East)
District Thane and others

..Petitioners.

Versus.

- 1) State of Maharashtra
- 2) Kalyan Dombivali Municipal Corporation,
Kalyan, through : Its Commissioner ..Respondents.

Ms. Neha Bhide, Advocate for the petitioners.
Mr. Y.M. Pendse for the petitioners.
Mr. A.S. Rao for Respondent No.2.

Mr. P. P. More, Asstt. Government Pleader, Writ
Cell R. No.1 for respondent.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

RESERVED ON: 30th October, 2017.

PRONOUNCED ON : 22nd November, 2017.

JUDGMENT (Per: Smt. Bharati H. Dangre,J)

1 Both these writ petitions revolve around the same set of facts and pray for similar reliefs, hence they are taken up together for hearing and disposed off by this common order.

2 The petitioners have approached this court, being aggrieved by the alleged discriminatory and arbitrary action of Respondent No.2 - Kalyan Dombivali Municipal Corporation (hereinafter referred to as “the Corporation”) in denying promotions to the petitioners, and the petitioners have sought directions to promote them in accordance with the seniority list published on 01.02.2013, without complying with the requirements of the Rules framed by the State Government, pertaining to Respondent No.2 in relation to the recruitment and classification of services.

3 Certain facts are undisputed in both the petitions. The petitioners are in the employment of the Corporation and occupying various posts such as Clerk-cum-Typists cum Computer Operator and are in continuous service of respondent no.2 Corporation for considerably long period of time and their appointments were effected as early as in 1974 and necessarily all the petitioners are appointed prior to 1997. The record reflects the date of appointment of the petitioners and the date on which they were appointed to the posts of clerk-cum-typist cum computer operator. The Respondent No. 2 published a seniority list of all the existing staff with sanctioned strength of 559 posts of clerk-cum-typists cum computer operators, working in the pay-scale of Rs.5200 – 20200 (grade pay Rs. 1900) as on 01.02.2013. The petitioners find place in the said seniority list on the basis of their date of appointments. It is also not in dispute that respondent no.2-corporation on 30.12.1997 forwarded a proposal to the State Government for approval of the posts of senior typists and equivalent posts. The eligibility for the said promotion was prescribed to be the seniority on the existing posts. It is also not in dispute that pending

consideration of the promotion to the post of senior typists and equivalent posts, the respondent no.2, framed Kalyan Dombivali Municipal Corporation (Recruitment and Classification of Service) Rules 2010 and they were notified in the official Gazette and came into force from its' publication w.e.f. 20th December, 2010. The said Rules were framed by Respondent No. 2 in exercise of its powers conferred under section 456(A) of the Municipal Corporation Act, 1949 ("MMC Act" for short) and after obtaining necessary approval from the State Government. The said Rules classified different services within the purview of the Kalyan Dombivali Municipal Corporation into various categories namely, Administrative cadre and administrative service, Secretariat services and the services in technical cadre. The said Rules are appended with Appendix-II which prescribes the minimum educational qualification and eligibility criteria for the various posts to be filled in into various categories of services, which were classified as per the Rules of 2010 and to be filled in by way of direct recruitment and promotion. The said Rules were made applicable w.e.f. 20.12.2010. Some of the petitioners submitted their objections to the applicability of the said

Rules to them and specifically being aggrieved by the fact that they are required to pass certain examinations, which were not essential to be passed at the time of their recruitment into the services of the respondent no.2 and according to them the said Rules should not have been made applicable retrospectively, since it amounted to change in the conditions of their service. It is the case of the petitioners that departmental promotion committee considered the candidates for promotions to the post of senior clerks, building supervisors, record keeper etc. and promoted 88 candidates from the cadre of the clerks by way of promotion, by following the procedure under section 454 of the M.M.C. Act but the petitioners were excluded from such promotional benefits.

4 The Petitioners are aggrieved by the issuance of the promotion order of 24th October, 2013 and their non-consideration for the promotional posts by ignoring their seniority and it is with this grievance, they have approached this Court by filing the writ petitions on 7th February, 2014, seeking directions to the Respondent No. 2 to promote the petitioners in accordance with their seniority

and without complying the requirements of the Rules of 2010, regulating the services of employees of respondent no. 2.

5 This Court was pleased to issue notice to the respondents and in response to which respondent no. 2 filed an affidavit, sworn by the Assistant Municipal Corporation Commissioner of Kalyan, Dombivali Municipal Corporation on 17th June, 2014. In the said affidavit, respondent no.2 has stated that the Government of Maharashtra in exercise of powers under section 456-A of the MMC Act, gives special powers to make Rules to be published for the purpose of recruitment in the establishment of the respondent no.2 corporation and by the said Rule, the State had determined the qualification etc. for the purpose for appointment to the posts in the establishment. It is also stated in the affidavit that as per the Rule 4B of the Recruitment Rules for the purpose of promotion, rule of seniority cum eligibility has to be followed. It is also stated that the corporation had decided to fill up 72 vacant posts in the year 2013 by way of promotion and the departmental promotion committee was constituted under the Chairmanship of

the Municipal Commissioner and three other members which met on 25.09.2013 for deciding the promotions and after taking into consideration the recruitment rules, eligibility criteria prescribed in the rules, they effected the promotions under grade-III. The affidavit further states that the grievance of the petitioners is baseless since recruitment rules came into force on 16/20 December, 2010 by which the qualifications were prescribed. It is further stated that the Rules in existence as on the date of the constitution of the departmental promotion committee will have to be taken into consideration and accordingly the departmental promotion committee has rightly considered the eligibility criteria, prescribed under the Recruitment Rules of 2010. It is categorically stated in the affidavit that the petitioners are not eligible in view of the recruitment rules as they have are not qualified in terms of the Rules of 2010. It is also stated that they have not passed the LSGD and Departmental examinations which have been introduced as an essential criteria for effecting the promotions. A statement is also made in the affidavit that the persons like the petitioners who have completed 12 years of service in the regular course and could not be

promoted for any reasons, they have been conferred the pay-scale in higher grade, but they have never been given charge of the promotional posts nor they are working on the said posts.

6 We have heard the learned counsel Mrs. Neha Bhide for the petitioners in writ petition no. 1944 of 2014 and Advocate Mr. Pendse for the petitioners in writ petition no. 1945 of 2014 and also Advocate Mr. A. S. Rao, appearing for Respondent No. 2 and the learned AGP appearing on behalf of Respondent No. 1 State.

7 The petitioners are aggrieved by non-consideration of their candidature for promotions to the various posts like senior clerk, building supervisor, excise supervisor, tax supervisor, record keeper, cashier, senior supervisor etc. which were to be filled in from the cadre of clerks. The Petitioners no doubt find placement in the seniority list published by respondent no. 2 as on 01.2.2013 based on their date of appointment. The Respondent No.2 has framed Kalyan Dombivali Municipal Corporation Service (Recruitment and Classification of Service) Rules 2010, which came into effect from 16/20 the December, 2010. However, the Respondent No. 2 has also

framed the Kalyan Dombivali Municipal Corporations Employees (Qualification/ Eligibility) and Departmental Examinations) Rules of 2010, which mandates every employee of respondent no.2 Corporation, working on the temporary/ permanent posts to pass the departmental examination within the chances and time prescribed and on failure to pass examinations, the said Rules provides for consequences in the form of losing of seniority.

8 The Kalyan Dombivali Municipal Corporation (Recruitment and Classification of Service) Rules, 2010 prescribe the eligibility criteria for a particular posts to be filled in either by way of promotion or by way of nomination. As far as the post for which the petitioners are aspiring, are included in the administrative services, including the post of senior clerk, excise supervisor, tax supervisor, building supervisor, record keeper, cashier, etc. The qualification prescribed for filling said posts through the channel of promotion is in Appendix-II of Rules of 2010 reproduced below :

Administrative service	By promotion.	a) 5 years experience of working on the post of meter
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	Senior Clerk/ Octroi Supervisor/ Tax Supervisor/ Building Inspector/ Record Keeper/ Cashier.	checker/ octroi checker/ clerk must have cleared. b) Must have passed departmental Lower Grade examination. c) must have cleared LSGD examination. d) Promotion to the aforesaid post would be effected on the basis of the seniority from the post of meter checker/ octroi checker/ as well as clerk.
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9 The petitioners are aggrieved by the promotion order dated 24.10.2013 issued in favour of 88 candidates on the post of senior clerk etc. in the pay band of Rs. 5200 to 20200 (Grade Pay Rs.2400).

As per the Recruitment Rules of 2010, the candidates who were working on the posts of Clerks were entitled for promotion, on the basis of their seniority, to the said post of Senior Clerk's cadre,

if they are having 5 years experience and also passed the departmental examination and the L.S.G.D. (Local Self Government Diploma Examination). The Respondents have categorically stated in the affidavit that the departmental promotion committee, which considered the candidates for promotion, considering their seniority and the eligibility in terms of Recruitment Rules of 2010. The Petitioners are making a consistent grievance that the said Rules may not be made applicable to them and they also sought exemption from appearing in the departmental examinations and the respondents have admitted in their reply that on attaining the age of 45 years, they may be exempted from passing the departmental examinations but under the prescribed requirement of 2010 Rules, they must pass the LSGD examinations.

Though the petitioners claim that they have been appointed long back and have continuous long length of service to their credit, it is a fact that the Recruitment and classification service rules came into force in 2010 and the said rules specifically mention that they are applicable to all employees of the Corporation who are in service on the date of coming into force of the rules barring part

time appointments, contractual appointments or appointments on daily wages. The petitioners have challenged the applicability of these rules which came into force in 2010. It is not controverted that when the departmental promotion committee met in the year 2013 to grant promotion to the candidates, the Rules of 2010 were already in force and it was incumbent on the part of the departmental promotion committee to adhere to the said rules, which they did. The DPC selected candidates who were eligible in terms of the Kalyan Dombivali Municipal Corporation (Recruitment and Classification of Service) Rules 2010 and since the petitioners were lacking the prescribed qualification of passing the Local Self Government Diploma, they were not considered to be eligible for promotion.

Even if it is so, the petitioners are not really deprived of any financial benefits as respondent no.2 in their affidavit had categorically stated that on completion of 12 years of service, in order to avoid stagnation in service, they have been conferred with the pay scale of higher post and no work of the higher post is in fact extracted from them as contended by the petitioners. The petitioners therefore were not eligible for regular promotion in view of the lack of

qualification in terms of recruitment rules but there is no financial loss to them as they are getting pay scale of higher post.

10 On the last date of hearing 6th November, 2017 when the matter was heard, the learned counsel for the petitioners has placed before us the proposed revised rules which are forwarded by Respondent No.2 to the State Government for its approval on 27th October, 2015 and according to the petitioners the proposed revised rules include the posts which the petitioners aspiring to be. On perusal of the said communication dated 27th October, 2015 placed on record and which we have accepted on record vide order dated 6th November, 2017, it is noted by us that the proposed revised recruitment criteria for promotion to the post of Senior Clerks etc. is now proposed to be as follows :-

a)	Degree in any faculty or equivalent qualification of recognized University.
b)	If LSGD examination conducted by Akhil Bhartiya Sthanik Swarajya Sanstha, is passed preference to be given.

11 We do not intend to create any hindrance in the way of the State Government considering the said revised rules and if at all the State Government relaxes the existing rules and the petitioners can be considered to be eligible in the light of the Service Rules if approved by the State Government, respondent no.2 will be at liberty to consider the candidature of the petitioners in the backdrop of the revised rules if the vacancies continue to exist.

12 In the light of aforesaid discussion, we do not find any merit in the submission advanced by the learned Counsel for the petitioners and we are of the considered opinion that the petitioners are not entitled for the reliefs sought by them in the writ petition. In the result, the writ petitions are dismissed with no order as to costs.

[SMT.BHARATI H.DANGRE, J.]

[S.C. DHARMADHIKARI, J.]