

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4461 OF 2013

Vilas Gopinath Nagvekar & Ors. ... Petitioners

Vs.

The BEST Undertaking,
Through the General Manager ... Respondent

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Mr. Atul Damle, Senior Advocate i/b. Ms. Leena Patil for the
Petitioners.

Mr. Sudhir Talsania, Senior Advocate a/w Ms. Hetal Master i/b.
Ashwin Ankhad & Associates for the Respondent.

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**CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : FEBRUARY 02, 2017.

P.C. :

1. This Writ Petition seeks a writ of *mandamus* or any other writ or order or direction seeking to restrain the respondent and directing it to apply a promotional policy, whereunder the Deputy Engineers possessing qualification of Diploma in Electrical Engineering would obtain benefits in a certain ratio and without disturbing those Degree holders who hold a Degree in the same subject.

2. The next relief sought is a direction to the respondent to fill in all the posts of Deputy Engineers by appointing Degree holders till the ratio of 60% is achieved and thereafter, the same be maintained. There are certain promotional posts and to fill up the same, a ratio as set out in prayer clause (c) should be maintained.

3. A relief is sought to protect the seniority of all Degree holders who are appointed as Deputy Engineers by order dated 29.01.2008 and consider them for promotion with retrospective effect. Thus, even in seniority, the percentage as enlisted above should be maintained.

4. Very few facts are required to be noted for disposal of this Petition, particularly, bearing in mind its frame. The 19 petitioners before us have proceeded against The Brihanmumbai Electric Supply & Transport Undertaking (for short "BEST"), a General Manager of which is designated as an authority under the Mumbai Municipal Corporation Act, 1888. The petitioners are questioning what is styled as 'promotional policy' and the Petition is based on certain information derived by making an application under the Right to Information Act, 2005. The information, according to the petitioners, reveals that 60% posts of Deputy Engineers are filled in by direct recruitment of Degree holders in Electrical Engineering. The petitioners are all such Degree Holders. The internal candidates possessing Degree in Electrical Engineering are considered for the post of Deputy Engineer directly on the basis of their educational qualification. The remaining 40% posts are filled in by internal candidates possessing a Diploma in Electrical Engineering. It is claimed that both the streams are different and independent. There are separate rosters maintained. However, despite the overwhelming and overriding preference to Degree holders, what has been discovered by the petitioners is that this percentage or ratio has been disturbed. The petitioners rely on this

piece of information and cite certain instances in paragraphs 5 to 7 of the Writ Petition. They also rely upon certain changes and amendments proposed and made in the Rules and Regulations regulating their services. It is thus claimed that Diploma holders are stealing a march and it is quite possible that in future endeavors, the petitioners may suffer. The Writ Petition is entirely based on an apprehension and completely lacks a concrete detailed base. There are statements made which would denote that the petitioners fear that Diploma holders would be considered for promotional posts, such as Assistant Engineers, Superintendent Engineers and Divisional Engineers. According to the petitioners, the ratio has been breached to some extent in the year 2007. The allegation is that after the Committee note was issued on 1st November, 1993, the petitioners discovered that the promotions granted resulted in the Diploma holders obtaining benefits far in excess of the stipulated ratio. Thus, the ratio maintained up to the year 2007, that is prior to 31st December 2008, has been disturbed by certain promotions granted to the Diploma holders. Thereafter, the petitioners place reliance on 'The BEST Officers (Recruitment) Rules, 2012' which took place of the earlier Rules of 1985. After referring to some of the Rules, it is stated that there are certain posts and which are vacant. These are the posts of Assistant Engineers. The Deputy Engineers will be considered for promotion to the said posts. The senior most Deputy Engineers shown in the seniority list are Diploma holders. Therefore, future promotions may be in excess of the ratio and those designated as seniors in the seniority list, who are Diploma

holders, would obtain the promotional benefits earlier. This would affect the future prospects and general career opportunities as far as the petitioners are concerned.

5. Mr. Damle, learned senior counsel appearing for the petitioners has taken us through the Petition and the annexures thereto and the affidavit-in-reply. The primary contention is that it is necessary, particularly in the light of the Committee note, that the policy should be implemented but without any discrimination or disturbance of the agreed ratio. He would invite our attention to page 139 of the paperbook, which is part and parcel of the affidavit-in-reply of the BEST/respondent, to submit that the ratio ought to be maintained right up to the post of Divisional Engineer which is Grade A-3 post but there is a entry which would enable the respondent to maintain the ratio only up to the post of Assistant Engineer (Grade A-5). In such circumstances, the Diploma holders are likely to claim and obtain more benefits. Further, our attention is also invited by him to the seniority list to submit that even in the seniority list, a copy of which is to be found annexed to the paperbook at page 144 onwards, the Diploma holders have been listed over and above the Degree holders. It is in these circumstances that he would submit that the prayers and reliefs as claimed be granted.

6. On the other hand, Mr. Talsania, learned senior counsel appearing for the respondent would submit that there is a basic fallacy in the understanding of the petitioners before us. He would

submit that the Writ Petition, as framed and filed, cannot be entertained. The Petition contains no particulars, much less any reliable data or details which would enable the respondent to deal with the same. There are no allegations and which can be said to be derived from any personal knowledge of the affairs by the petitioners. They rely upon certain information obtained, and selectively, under the Right to Information Act, 2005. However, the Writ Petition proceeds to set out certain illustrations and examples without indicating as to how the promotions effected in the year 2007-2008 can be called in question and belatedly in this Writ Petition. Secondly, without the promotional details disclosed and in what manner the ratio is allegedly disturbed, so also without making all those affected as party respondents, the grievances of the petitioners cannot be redressed. They would be adversely affecting the employees whose career prospects including promotion are under consideration. Thirdly, and lastly, he would submit that the arguments are premised on a certain note but without reading that note in its entirety as to how the percentage, if at all maintained, has to be maintained up to a certain level, beyond which it is open for everybody to compete. That is how the promotional policy proceeds according to Mr. Talsania. Therefore, unless and until the seniority Rules are relied upon, the details of those Deputy Engineers placed above, and wrongfully, are set out and all those who might be affected by the petitioners' prayers are made respondents to the Writ Petition, no relief touching the seniority can be granted. He therefore, submits that the Writ Petition be dismissed.

7. After having heard both sides and perusing the Writ Petition, the affidavit-in-reply and the rejoinder, we are of the opinion that there is much substance in the objections raised by Mr. Talsania. This is not a case where any relief can be granted to the so-called aggrieved petitioners, for we are unable to understand as to what they are aggrieved by and from what period. We are unable to appreciate any argument, and of the nature canvassed, for such arguments ought to be based on precise and clear pleadings. There are pleadings based on some information derived by making an application under the Right to Information Act, 2005. It is too well settled to require any reference to any precedent, if the information sought under the said Act is there in the official records and files, that ought to be disclosed and made available in entirety. However, for this piece of information to be relied upon and to claim substantive reliefs as are claimed in this Writ Petition, it is obligatory that the petitioners and parties like them set out the right that is infringed and that legal right is pre-existing and a established one. That should not be inchoate or unclear and based on some guess work which the petitioners desire this Court to undertake. We are here to redress the real grievances and based on established and proven legal rights. We are not sitting here to probe into some alleged irregularity and in matters of promotions or policies in relation thereto. We cannot disturb any policy decision unless and until it is established and proved that such policy or the decision based or taken in furtherance thereto is arbitrary, discriminatory and violative of the mandate of Article 14 and 16 of the Constitution of India. The right guaranteed by

Article 16(1) is that of being considered for promotion and not a promotion by itself. We do not and cannot guarantee promotion. Similarly, if there are promotional policies and Rules, then, a clear breach thereof has to be pleaded. By merely pleading a violation but without further proving that it has led to infringement of the fundamental right guaranteed by Article 14 and 16(1) of the Constitution of India, no relief can be obtained by parties like the petitioners. We have noted that somebody who is promoted in the year 2008, not being before this Court, in his absence, his promotional opportunities or his promotion itself cannot be disturbed. Similarly, some illustrations which have been set out but without further details, by themselves, would not enable us to grant any relief. The Writ Petition is filed on 03rd May 2013. The grievance pleaded is that there was a certain ratio followed up to the year 2007 but it came to be violated post 2007 and in 2008. Now that has been put in issue in this Petition filed after nearly five years. Those, either promoted or retired or obtaining further promotions and benefits, are not before us. Similarly, with regard to the seniority, we find that the established principle is, all those affected and by the placement claimed, ought to be before the Court and they should be given an opportunity to support their case. It is not left only to the employer, but even such employees who are going to be affected have to be heard in some peculiar facts and circumstances in relation to their claim of seniority. Now, in a seniority list which is running into nearly 10 pages, if we have several officers being shown from serial no. 33 onward on the basis that they are Diploma holders and some officers below them

are designated as Degree holders but shown, erroneously and wrongfully according to the petitioners, below these Diploma holders, then, such of the Diploma holders, who can be displaced by the placement claimed by the petitioners, should be before this Court and duly noticed. We do not see how, merely because in future the ratio may be disturbed further or that the disturbance as apprehended being genuine, the petitioners would be deprived of promotion. That is something which should not bother us and on that basis, we should not interfere in our writ jurisdiction. The Writ Petition as framed and presented before us, is based on no pre-existing and established legal right. We have also noted that there is no violation and specifically pleaded of any particular Rule or Regulation and which indicates certain ratio. We have also noted that nothing has been placed before us in the matter of seniority to show that either the Rule of seniority, and ordinarily followed, namely, the length of service is breached and violated or there is a Rule contrary thereto and which gives preference to Degree holders over and above the Diploma holders in seniority. Nothing of that nature having been placed, much less pleaded, we cannot grant any relief in the Writ Petition.

8. As a result of the above discussion, we do not see any reason to entertain the Writ Petition. It is dismissed but without any order as to costs.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)