

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 365 OF 1998

Shri Ravikant J. Sonawane ...Petitioner
vs.
The Registrar, Dist. Court, Thane & 14 Ors. ...Respondents

WITH

WRIT PETITION NO. 366 OF 1998

Shri Naren P. Chhatre ...Petitioner
vs.
The Registrar, Dist. Court, Thane & 14 Ors. ...Respondents

...

Mr.Ganesh Krishnaji Sovani for the Petitioners.
Mr.S.R.Nargolkar for the Respondents Nos.1 to 3.
Mrs.K.R.Kulkarni, AGP for the Respondent No.4.

...

CORAM : A.A. SAYED,

M.S. KARNIK JJ

DATED : 9th OCTOBER 2017

JUDGMENT: (per M.S.KARNIK, J.)

The Petitioner in Writ Petition No.365/1998 was appointed as a Junior Clerk (JC) in the District Court at Thane on 11 October, 1989 and posted at Kalyan. In 1992, the Petitioner passed Lower Standard Departmental (LSD) Examination. In July, 1995, he passed Higher Standard Departmental (HSD) Examination. In accordance with the Civil Manual, as a result of passing of said Examination, the

Petitioner became entitled to promotion to the post of Assistant Superintendent. The Petitioner's name appeared at serial no.8 in the list of successful candidates in the said Examination.

2. The Petitioner in Writ Petition No.366/1998 came to be appointed as a Junior Clerk on 10 September 1990 and passed his LSD Examination in 1992. In 1996, he passed HSD Examination and was at serial no.5 in the order of merit of the list of candidates who passed the HSD Examination. The Petitioner also became entitled to promotion to the post of Assistant Superintendent.

3. In 1995 five senior clerks and one junior clerk (D.S. More) who were senior to the Petitioners were promoted to the post of Assistant Superintendent (AS). According to the Petitioners, D.S. More was given jumping promotion of Junior Clerk to Assistant Superintendent.

4. The Petitioners relied on the Rule 580 of the Civil Manual which reads thus:-

“Rule 580. In the matter of promotions and confirmations, the District Judge should take into consideration the following principles :-

(i) All clerks who pass the Lower Standard Departmental Examination should be confirmed immediately in the existing vacancies. Such confirmations should not be deferred till the passing of the said Examination by their seniors.

(Vide High Court Circular No.B-10135/50, dated the 5th December 1950).

(ii) The Junior Clerks who have passed the Lower Standard Departmental Examination and have thus qualified themselves for promotion to the posts of senior clerks should be promoted to the posts of senior clerks, subject to seniority cum fitness interse, even though the Junior Clerks who have passed the Higher Standard Departmental Examination but junior in service are available.

The seniority of senior clerks should be determined from the date of their appointment to that post i.e. the senior clerk and not reference to seniority in the cadre of junior clerk.

(iii) If a clerk who is junior in service has passed the Lower Standard Departmental Examination before a clerk who is senior in service, the clerk junior in service should be confirmed, if there is a permanent vacancy, in preference to the clerk senior in service who has not passed the Examination.”

5. According to the Petitioners, the vacancies in the post of Assistant Superintendent were available on the day when they passed the HSD Examination and therefore, the Petitioners should have been promoted as a Assistant Superintendents in 1995 itself. However, the Respondents on the basis of the annual HSD Examination which was conducted in July, 1996, in which Examination Respondent nos. 5 to 11 passed, considered the cases of the said Respondents and appointed them to the available vacancies of the Assistant Superintendents.

6. Learned Counsel for the Petitioners submits that the Respondents should not have waited till Respondent nos. 5 to 11 cleared the exam. In his submission, the Petitioners have right to be promoted to the post of the Assistant Superintendent no sooner they passed the HSD Examination as the vacancies of the Assistant Superintendents were very much available on the date when the Petitioners passed HSD Examination. The Respondents thus have deprived the Petitioners of their rightful claim of promotion to the post of Assistant Superintendent.

7. Learned Counsel for the Respondent nos. 1 and 2 submitted that there is no provision in the Civil Manual which provides for promotion of junior clerk to the post of Assistant Superintendent immediately upon passing of the HSD Examination in the available vacancy. In his submission the promotion to the post of Assistant Superintendent is based on seniority-cum-fitness. In his submission though the Petitioners have passed HSD Examination prior to the Respondent nos. 5 to 11, the Petitioners cannot be regarded as seniors to the Respondent nos.5 to 11 merely because the Petitioners have passed HSD Examination earlier.

8. We have considered the submissions advanced by the learned Counsel. Admittedly, the Petitioners are junior to the Respondent

nos. 5 to 11 in the grade of junior clerks. We have not been shown any Rule in the Civil Manual which provides for immediate promotion as Assistant Superintendent in the existing vacancy upon the junior clerk passing the HSD Examination. We find that the Rule 580 in the Civil Manual on which reliance has been placed by the learned Counsel for the Petitioners is in respect of those junior clerks who have passed LSD Examination and those who have qualified themselves for promotion to the post of senior clerks. It is not in dispute that the Petitioners in their own turn have been promoted as Assistant Superintendents subsequently.

9. In the absence of there being any Rule which provides for immediate promotion of junior clerk in the available vacancy of Assistant Superintendent on passing HSD Examination, we do not find any error in the course adopted by the Respondent nos. 1 and 2 in considering the cases of Respondent nos. 5 to 11 for promotion to the post of assistant superintendent. Admittedly the Respondent nos. 5 to 11 are seniors to the Petitioners in the grade of junior clerk. In this view of the matter, we do not find any merit in the Petitions and the same are accordingly dismissed with no order as to costs.

(M. S. KARNIK J)

(A.A.SAYED J)