

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10521 OF 2015

Mrs. Meera G. Khandagale,
aged 71 years,
lastly working as Assistant Commissioner
of Labour, under the State Labour
Commissioner Govt. of Maharashtra
at Tardeo, Mumbai and
presently residing at R/4, P-5
Sector-6, Vashi,
Navi Mumbai-400 703

.....Petitioner

Versus

1 The State of Maharashtra
through the Secretary,
Industry, Energy and Labour Department,
Govt. of Maharashtra, Mantralaya,
Mumbai-32.

2 The Chairman,
Maharashtra Public Service Commission,
Bank of India Building, M.G.Road,
Fort, Mumbai-400 023.

.....Respondents

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy ,
Advocates for Petitioner.

Mr. Vishal Thadani, APP for Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : July 24, 2017.

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

Rule. Rule made returnable forthwith. With consent of the learned counsel for the parties, the petition is taken up for final hearing immediately.

2 In 1969, the petitioner was appointed as 'Labour Investigator'. She was promoted as the 'Government Labour Officer' in 1976 and thereafter as 'Assistant Commissioner of Labour' in 1984. She was not selected for the post of 'Deputy Commissioner of Labour'. Aggrieved by it, she approached the Maharashtra Administrative Tribunal (In short '**Tribunal**') in Original Application No.345 of 1993. Her claim was rejected on the ground that the Tribunal has no jurisdiction to adjudge who is better candidate, meaning thereby the petitioner was not selected by the Maharashtra Public Service Commission (In short '**MPSC**') on merits. Thereafter, she filed Review Application No.7 of 1996, which was also rejected on 4.4.1997. Pending review, she filed Writ Petition No.2 of 1996 in this Court to interpret the Recruitment Rules of 1981 and 1985 for the post of 'Deputy Commissioner of Labour' and 'Additional Commissioner of Labour'. The said petition was

allowed vide judgment and order dated 17.2.2010. Before advertng to the claim of the petitioner, it may be profitable to re-produce the observations made by the Division Bench in Writ Petition No.2 of 1996:

“2 It is to be noted that the Petitioner has already retired from service as well as the Respondent Nos.4, 5 and 6 whose appointments are challenged by the Petitioner in the present petition have also retired from service. Therefore, only the academic interest/question of the appointments and validity of the notification dated 06th May, 1992 has to be considered in the present Writ Petition.”

The Writ Petition was allowed and the Notification dated 6.5.1992 issued by the MPSC was declared ultra-vires. Resultantly, the Notification dated 6.5.1992 was quashed and set aside. That based on the judgment in the aforesaid writ petition, the petitioner claimed that her right to be appointed as 'Deputy Commissioner of Labour' has revived and accordingly, she sought declaration that she was entitled to the post of 'Deputy Commissioner of Labour and further consequential benefits including pension from 1.1.2001, which is her date of retirement.

3 The Tribunal vide judgment and order dated 24.12.2010 rejected petitioner's claim in Original Application No.942 of 2010. Aggrieved by the same, this petition is preferred under Articles 226 and 227 of the Constitution of India.

4 Heard the learned counsel for the petitioner and the learned APP for the State.

5 It is not in dispute that the petitioner was not selected as 'Deputy Commissioner of Labour' having found 'not suitable' and, therefore, her non selection was on merits. The first Original Application No.345 of 1993 came to be rejected on this ground. The Review against the said order also met with the same fate. Now merely because Recruitment Rules for the subject post were held ultra-vires and set aside in Writ Petition No.2 of 1996, though at the instance of the petitioner, that itself will not accrue rights in petitioner to get her appointed as 'Deputy Commissioner of Labour'. In our view, this is clear misinterpretation of the judgment rendered in Writ Petition No.2 of 1996. In fact, the Division Bench in Writ Petition No.2 of 1996 in paragraph 2 of its judgment (as

reproduced here-in-above) has observed that the present petitioner has already retired from service and, therefore, only in academic interest, validity of the Notification dated 6.5.1992 was taken up for its legal scrutiny. At the cost of the repetition, it may be stated that the petitioner was not eliminated from the process of selection for the post of 'Deputy Commissioner of Labour' in terms of prevailing Notification dated 6.5.1992 but she was not selected having not found suitable for the said post. That for this reason, merely because the Notification issued by the MPSC on 6.5.1992 was held ultra-vires that itself will not revive rights of the petitioner to be selected for the post of 'Deputy Commissioner of Labour'.

6 That for the reasons aforesaid, we find no merit in the matter and accordingly, the petition is dismissed.

7 Rule is discharged.

(SANDEEP K. SHINDE, J) (SMT. V.K. TAHILRAMANI, J)