

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

51 WRIT PETITION NO. 3313 OF 2018

MAYADEVI HIMMATRAO KHAIRNAR ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Atmaram J. Patil, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for Respondent-State.

...

**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 24th OCTOBER, 2018.

PER COURT:-

1. The petitioner had filed Original Application before the Maharashtra Administrative Tribunal challenging the communication dated 30.05.2015 issued by respondent no.2 intimating the petitioner that the petitioner does not possess the educational qualification for the post of Civil Engineering Assistant. The petitioner holds the qualification of HSC and two years Draftsman (Civil) Course of Industrial Training Institute.

2. According to the respondent, the qualification is not as per the Rules and as such the case of the petitioner is negatived. The Tribunal relying on the Government Resolution dated 15.12.2011 has negatived the case of the petitioner.

3. We have heard the learned counsel for the petitioner and the learned A.G.P. for respondent-State.

4. The amendment to the Civil Engineering Assistant Group-C in the Irrigation Department (Recruitment) Rules, 2002 have not been considered by the Tribunal. Under notification dated 26.05.2010 issued under proviso to Article 309 of the Constitution of India, the Civil Engineering Assistant Group-C in the Irrigation Department (Recruitment) Rules, 2002 have been amended and the said Rules are called as the Civil Engineering Assistant Group-C in the Irrigation Department (Recruitment) (Amended) Rules, 2010. Under the said amendment, Clause B of Rule 3 of the principle rules have been deleted and following has been substituted:

“In Rule 3 of the principal Rules:-

(i) for the words “Irrigation Department” occurring for the first time, the words “Water Resources Department” shall be substituted.

(ii) in clause (iii), for the words “Irrigation Department” occurring for the first time, the words “Water Resources Department” shall be substituted.

(iii) for clause (b), the following clause shall be substituted namely:-

“(b) by nomination from amongst the

candidates who:-

(i) unless already in the service of Government are not more than 33 years of age; and

(ii) have passed Secondary School Certificate Examination and also passed:-

(A) Civil Engineering Assistant's one year course conducted by the Government Technical Institute of the Technical Education Department of the Government; or

(B) Two years' Draftsman (Civil) Course of Industrial Training Institute; or

(C) Two years' Surveyors course of Industrial Training Institute; or

(D) Civil Engineering Contracting Course of Industrial Training Institute; or

(E) Degree or Diploma in Civil Engineering or equivalent qualification thereto."

5. The Rules framed under proviso to Article 309 of Constitution of India cannot be superseded by the executive instructions issued under Article 162 of the Constitution of India. The Government Resolution dated 15.12.2011 on which the reliance is placed by the Tribunal has been issued under the executive powers. The executive instructions under the executive powers cannot supersede the Rules

framed under proviso to Article 309 of the Constitution of India.

6. Considering the Rules as are pointed out to us for appointment by nomination, two years Draftsman (Civil) Course of Industrial Training Institution is an adequate qualification.

7. In light of the above, the impugned judgment and the impugned communication is quashed and set aside. The respondent shall consider the qualification of the petitioner and if the respondents are satisfied that the petitioner possesses the qualification of the two years Draftsman (Civil) Course of Industrial Training Institute, then shall consider the candidature of the petitioner as possessing a valid qualification and after considering all other relevant aspects shall take steps with regard to the issuance of the appointment order within a period of three (03) months.

8. Writ Petition is accordingly allowed. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.10.29
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