

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

5 WRIT PETITION NO. 7735 OF 2013

Shyam Marotirao Kavle,
Age 33 years, Occu. Service as
Superintendent, General Administration
Department, Zilla Parishad, Nanded. ..PETITIONER

VERSUS

- (1) The State of Maharashtra,
Through Principal Secretary,
General Administration Department,
Mantralaya, Mumbai.
- (2) The Secretary,
Rural Development & Water Conservation
Department, Mantralaya, Mumbai.
- (3) The Chief Executive Officer,
Zilla Parishad, Nanded. ..RESPONDENTS

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Mr. S. R. Choukidar, Advocate for the Petitioner.
Mr. S. G. Karlekar, AGP for Respondents-State.
Ms. Preeti V. Diggikar, Advocate for Respondent
No.3.

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**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATED : 18th JULY, 2018.

PER COURT:-

1. Rule. Rule made returnable forthwith.
With consent of the parties, matter is taken up for
hearing at admission stage.

2. The petitioner was appointed as Senior Assistant on 06.04.2005. The petitioner was promoted as Superintendent on 22.12.2009, subsequently, under order dated 28.02.2013, the petitioner is proposed to be reverted. The petitioner has assailed the same. This Court on 25.09.2013 has granted interim order in favour of the petitioner.

3. Mr. Choukidar, learned counsel for the petitioner submits that, the case of the petitioner was considered by the selection committee. The selection committee found that the petitioner possesses all the necessary qualification, experience and has passed the departmental examination in four chances and thereafter, the petitioner was given promotion. According to the learned counsel, the petitioner being from reserved S.C. Category, one additional chance was given by the Chief Executive Officer. The same is permissible as per the Government Resolution dated 24.08.1976 and 16.11.2006. The learned counsel also relies on Rule 4 of the Maharashtra State Zilla Parishad District Services Post Recruitment Examination Rules, 1985 (hereinafter referred to 'Rules 1985').

4. Ms. Diggikar, learned counsel for the Zilla Parishad submits that the additional chance was granted to the petitioner. The petitioner could not clear the departmental examination within

three chances and he cleared within four chances. The Chief Executive Officer had given additional chance to the petitioner, considering the Government Resolution dated 24.08.1976. According to the learned counsel, as the petitioner passed the departmental examination in four chances instead of three, the petitioner is not entitled to continue on the promotional post of Superintendent.

5. Mr. Karlekar, learned A.G.P. submits that the resolution dated 24.08.1976 and 16.11.2006 would not apply to the case of the petitioner, as the same would apply only to the Government Officers. The learned A.G.P. further submits that the Chief Executive Officer could not have given the additional chance to the petitioner. The action proposed and impugned in the present petition is justifiable, in view of the Rules existing and clarification given by the Government as per Circular dated 28.02.2013.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. It is a matter of record that the petitioner has passed departmental examination, required for the post of Superintendent in four attempts. The petitioner belongs to Scheduled Caste category. It is also matter of record that the duly constituted Departmental Promotion

Committee had considered the case of the petitioner and recommended the petitioner for the promotional post of Superintendent.

8. The only debatable issue would be the number of chances, the petitioner would be entitled to for passing the departmental examination. Rule 4 of the Rules 1985 would be relied.

"4. Period and number of chances for passing Examination.- (1) Every Parishad employee appointed after the appointed date shall be required to pass the Examination within three chances and within a period of four years.

(2) Every Parishad employee appointed before the appointed date shall be required to pass the Examination within three chances and within a period of four years from the appointed date.

(3) Notwithstanding anything contained in sub-rule (1) or (2),-

(a) If for any reasons, an Examination is not held in a particular year, that year shall be excluded in computing the total period of years mentioned in sub-rules (1) and (2).

[(b) The Chief Executive Officer, may in exceptional circumstances for good and sufficient reasons to be recorded in writing, grant not more than two chances to a Parishad employee or extend the time by not more than two years for passing the Examination]"

9. Rule 4 (3-b) was introduced by way of an amendment with effect from 24.05.1999. Rule 4 (3-b) gives powers to the Chief Executive Officer in exceptional circumstances for good and sufficient reasons to be recorded in writing to grant additional opportunity not more than two chances or more than two years to Parishad employee

for passing the examination. It is not disputed by either of the parties that the Chief Executive Officer had granted additional chance to the petitioner and the petitioner has passed the departmental examination in four chances. It appears that the Chief Executive Officer has granted opportunity to the petitioner to pass the departmental examination relying on the Resolution dated 24.08.1976 and/or Government Resolution dated 16.11.2006. Even if, the contention of the learned Additional Government Pleader is accepted that the said Government Resolution would not apply to the petitioner and it would not inure to the benefit of the petitioner, however, Rule 4 (3-b) empowers the Chief Executive Officer to give additional chance not more than two chances to pass the departmental examination. The petitioner in one additional chance has passed the departmental examination and thereafter, is considered for selection. At the time, the petitioner was promoted on recommendation of the Departmental Promotion Committee, the petitioner had already passed the required examination in four chances. Courtesy, the Chief Executive Officer who had given one additional chance to the petitioner. The same was within his powers, though, the Chief Executive Officer may have relied on erroneous Resolution.

10. Considering the above, the promotion of the petitioner as Superintendent does not suffer from any illegality.

11. Rule is made absolute in terms of prayer
Clause 'B'. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/July-18