

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9665 OF 2003

The State of Maharashtra	...Petitioner
Versus	
Shri R. D. Tamhankar	...Respondent

**WITH
CIVIL APPLICATION NO. 98 OF 2016
IN
WRIT PETITION NO. 9665 OF 2003**

Shri Rajeev Dinkar Tamhankar	...Applicant
<u>In the matter between :</u>	
The State of Maharashtra	...Petitioner
Versus	
Shri Rajeev Dinkar Tamhankar	...Respondent

**WITH
WRIT PETITION NO. 4776 OF 2004**

Shri Rajeev Dinkar Tamhankar	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Mr. N. C. Walimbe - AGP for the State - Petitioner in WP 9665 of 2003 and for State - Respondent in WP 4776 of 2004.

Mr. N. V. Bandiwadekar for Petitioner in WP 4776 of 2004 and for Applicant in CA 98 of 2016 and for Respondent in WP 9665 of 2003.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 04 JULY 2018

COMMON ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] In both these petitions, the challenge is to the judgment and order dated 1st April 2003 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 191 of 2002 instituted by Shri R. D. Tamhankar seeking the benefit of GR dated 16th April 1984 and consequent status as qualified gazetted officer along with the benefits of the prescribed pay-scales and other benefits which go along with such status.

3] Writ petition no. 9665 of 2003 has been instituted by the petitioner - State, which is aggrieved by the impugned judgment and order granting the aforesaid relief to Shri R. D. Tamhankar with effect from 8th December 1987 along with consequential benefits. Writ petition no. 4776 of 2004

has been preferred by Shri R. D. Tamhankar against the very same impugned judgment and order dated 1st April 2003, to the extent, the same has denied him interest on the financial benefits from 1987 till the date of payment. In a sense, therefore, both the petitions are cross petitions and it is only appropriate that they are disposed of by a common judgment and order.

4] Mr. Walimbe, the learned AGP for the State submits that there is no material on record on basis of which it could have been said that a degree of B.Tech in Metallurgy is equivalent to a degree in Mechanical Engineering. He submits that in fact this issue of equivalence was referred to the University of Mumbai, which has, by its letter dated 26th April 2001, very clearly opined that B.Tech (Metallurgy) degree examination is not recognized as equivalent to B.E. (Mechanical) degree examination for academic purposes. Mr. Walimbe submits that from this, it is quite clear that Shri R. D. Tamhankar, on the date of his appointment as a Junior Engineer w.e.f. 8th December 1987, did not possess the qualification of B.E. (Mechanical) or equivalent.

5] Mr. Walimbe, the learned AGP submits that when Shri R. D. Tamhankar was appointed as a Junior Engineer in the Irrigation Department w.e.f. 8th December 1987, there were no recruitment rules in existence. Therefore, even though Shri R. D. Tamhankar possessed the qualification of B. Tech (Metallurgy) he was appointed as Junior Clerk in the Irrigation Department. Mr. Walimbe submits that most of the works in the Irrigation Department involve mechanical engineering. Therefore, unless Shri R. D. Tamhankar were to possess degree of B.E. (Mechanical Engineering), there was no question of his claiming benefits under the GR dated 16th April 1984. Mr. Walimbe submits that the crucial aspect as regards the non existence of recruitment rules in the year 1987 has not been considered by the MAT in the impugned judgment and order dated 1st April 2003.

6] Finally, Mr. Walimbe submits that the Department of Higher Technical Education, State of Maharashtra, has issued the GR dated 18th October 2013, in which, the qualifications which can be considered as equivalent to cadre of B.E. (Mechanical) have been clearly stated. Mr.

Walimbe submits that the degree of B.Tech (Metallurgy) is not one of the equivalent prescribed. For this reason also, the MAT erred in virtually treating the degree of B.Tech (Metallurgy) as equivalent to the degree of B.E. (Mechanical).

7] Mr. Bandiwadekar, the learned counsel for Shri R. D. Tamhankar submits that most of the contentions now raised by Mr. Walimbe stands answered in the judgment and order dated 3rd November 2000 disposing of Original Application No. 717 of 1998 instituted by Shri R. D. Tamhankar. He points out that this judgment and order was never challenged by the State and therefore, the State cannot be permitted to re-agitate such issues in this second round of litigation.

8] In any case, Mr. Bandiwadekar submits that in terms of the GR dated 16th April 1984, the issue of equivalence had to be determined by the Director of Technical Education, Maharashtra, which has in fact, answered such issue in favour of Shri R. D. Tamhankar. He submits that the reference to University of Mumbai was misconceived and

the opinion of the University of Mumbai is in the context of academic policy of the University. He submits that even the University of Mumbai, in its opinion, has in fact stated that Metallurgy subjects are part of the Mechanical Engineering courses offered by the University. Mr. Bandiwadekar submits that the MAT, had in fact, sought for information from the petitioners- State and the State, in response, had clearly stated that the duties in the Irrigation Department involve gate manufacturing works and therefore, services of a Metallurgic Engineer or an engineer having qualifications in Metallurgy were essential. Mr. Bandiwadekar submits that there is absolutely no error in the view taken by the MAT in the impugned judgment and order dated 1st April 2003 except that the MAT, ought to have awarded interest to Shri R. D. Tamhankar on the entitlements, which he is now awarded.

9] Mr. Bandiwadekar, thereafter, on the instructions from Shri R. D. Tamhankar, who is present in the Court, made a statement that Shri Tamhankar will not press for the relief of interest and consequently, has no objection to the disposal of writ petition no. 4776 of 2004 as '*not pressed*'. Mr.

Bandiwadekar, again, on basis of instructions from Shri R. D. Tamhankar, who is present in the Court, also made a statement that he does not press for any reliefs in civil application no. 98 of 2016, which may also be disposed of accordingly.

10] The rival contentions mainly in writ petition no. 9665 of 2003 therefore now fall for our determination.

11] There is no dispute that Shri R. D. Tamhankar was appointed as Junior Engineer w.e.f. 8th December 1987 in the Irrigation Department. At the time of his appointment, there is also no dispute whatsoever that Shri R. D. Tamhankar possessed the qualification of B. Tech (Metallurgy).

12] The GR dated 16th April 2014, *inter alia* provides that all junior engineers who possess the qualification of a degree in engineering, will be conferred a gazetted status of Assistant Engineer Grade II after they complete the prescribed service in the grade of junior engineers. This GR, also contemplates conferment of the status of a gazetted

officers upon junior engineers who do not possess the qualification of graduation. However, the numbers of years of service prescribed in respect of such junior engineers is ten years.

13] Since, Shri R. D. Tamhankar, was sought to be treated as an unqualified junior engineer, he instituted OA No. 717 of 1998 before the MAT, seeking for the benefits of the GR dated 16th April 1984 by treating him as a qualified junior engineer. This OA was disposed of by the MAT vide judgment and order dated 3rd November 2000. The MAT, did not record any definitive conclusion but, the MAT, directed the State to decide within two months the issue raised by Shri R. D. Tamhankar *in the light of above particularly the preceding paragraph.*

14] The operative portion of the judgment and order dated 3rd November 2000 is contained in paragraph 16. Therefore, reference to paragraphs 14, 15 and 16 are relevant and the same read as under:-

"14. It may be recalled here that the appointment was given to the applicant on regular establishment

in vacant post in the year 1990 as Jr. Engineer in the pay scale of Rs.1400-2300; and he is continued thereafter. Prior to that the appointments were on R.T.E. as Jr. Engineer, from 8.12.1987. If anyone is degree holder obviously relating to that particular wing i.e. Civil, Mechanical, Electrical, etc., as the case may be or its equivalent, he could only have been appointed as Assistant Engineer Grade II being the upgraded post of Jr. Engineer for the degree holders, as per the G.R. of April 16, 1984. It is also seen that as per Govt. decision (Order) of March 1987, Chief Engineer (Electrical), Nashik, was competent to appoint Assistant Engineer Grade II. The applicant was appointed in December, 1987. However, the said appointment was as Jr. Engineer. It may be stated that in Clause (1) of Paragraph 1 the words are significant. Thus, although the appointment may be for Jr. Engineer, the degree holder Engineers were to get the status of Class II and the designation as Assistant Engineer Grade II. Obviously, they would get the pay scale meant for Assistant Engineer Grade II i.e. Rs.600 to 950/-.

15. Now, the applicant is a Metallurgical Engineer. The parties have not been able to throw light on the fact as to whether the degree holder Metallurgical is also qualification being equivalent acceptable degree for the degree holder Mechanical. If he is so qualified then the applicant would be entitled to be recognized as Assistant Engineer Grade II in the pay scale of Rs.600-950, w.e.f. 8.12.1987. The fact that he accepted the post or the pay scale of Jr. Engineer cannot be made much of as the said acceptance is of no consequence in the teeth of the provisions as above made by the Respondent Government itself. The respondent No. 1 Government will have to decide the equivalence. In the event, it is found that the applicant who is a degree holder in Metallurgy is not qualified as such, then he can be treated as unqualified Jr. Engineer w.e.f. 8.12.1987 and can be considered for the Sectional Engineer, if he fulfills the conditions relating to one subsequent Govt. Resolution issued consequent upon G.R. upon G.R.

dt. 16.4.1984 with effect from 8.12.1997 and would get pay scale of Sectional Engineer as per the said upgradation unless of course he had done relevant diploma in mechanical or equivalent faculty in which case in would be entitled to the upgradation and pay scale accordingly. It is clear from the various G. Rs., that the arrangement relating to the appointments of Sectional Engineer and Assistant Engineer Grade II was until the framing of the rules. The learned P.O. has filed the draft rules. They may come into effect at any future date. It is needless to say that if the applicant is covered by those rules, he will get the benefit of those rules.

16. We thus hereby direct the respondents to decide within 2 months, the position of the applicant regarding the post he was and is entitled to hold as was on the pay scale accordingly, from such date/s that he would be found entitled to in the light of the above particularly the preceding paragraph. Liberty to the applicant to move this Court, if aggrieved. The application is disposed of accordingly. No order as to costs."

15] The State has placed on record communication dated 19th October 2000 addressed by the Under Secretary, Government of Maharashtra to the MAT, which contains response to certain queries posed by the MAT in connection with OA No. 717 of 1998 instituted by Shri R. D. Tamhankar. This is at Exhibit 'D' page 124 in writ petition no. 9665 of 2003. The response to the very first query is relevant and the same reads as follows :

Sr. No	Queries	Explanation
1	The Applicant is Metallurgical Engineer, therefore, whether he can be appointed as Mechanical Engineer.	The minimum qualification for the recruitment in the cadre of Junior Engineer (Mech.) is the Diploma or Degree in Mechanical Engineering or an equivalent qualification recognized by the Government. As the Department has to test the gate manufacturing works for metallurgical qualities the Metallurgical graduate is appointed against the post of Junior Engineer (Mechanical).

16] From the aforesaid, it is apparent that Shri R. D. Tamhankar was appointed as Junior Engineer in the Irrigation Department, even though, he possessed degree of B. Tech (Metallurgy) and not the degree of B.E. (Mechanical), precisely because the duties in the Irrigation Department involve the testing of gate manufacturing works for which the services of a Metallurgic Engineer were found as essential.

17] Mr. Walimbe has himself contended that in 1987 there were no recruitment rules in question for appointment to the post of Junior Engineer in Irrigation Department. From this, Mr. Walimbe tried to suggest that the very initial appointment of Shri R. D. Tamhankar, was not every regular. Such a contention was never raised before the MAT had in any case deserves no acceptance.

18] It is well settled that existence of recruitment rules is not a *sine qua non* for valid recruitment. In **Smt. Swaran Lata vs. Union of India & Ors. (1979) 3 SCC 165**, the Hon'ble Supreme Court has held that the Administrator of Union Territory of Chandigarh was empowered to make valid appointments even without framing in the recruitment rules under the proviso to Article 309 of the Constitution of India. Again, in **B. N. Nagarajan & Ors. vs. State of Mysore & Ors. AIR 1966 SC 1942**, the Hon'ble Supreme Court has again clarified that it is not obligatory under the proviso to Article 309 to make rules for recruitment etc. before a service can be constituted or of post created or filled. This is because the State Government and the executive power in relation to all matters with respect to which the

legislature of the State has power, to make laws. There is nothing in terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. Therefore, there was nothing irregular in the appointment of Shri R. D. Tamhankar. In fact, in the absence of any recruitment rules in the year 1987, the State, after a long many years, cannot treat Shri R. D. Tamhankar as an unqualified Junior Engineer even though, he admittedly possessed the qualification of B. Tech (Metallurgy) at the time of his appointment.

19] In the light of the response dated 19th October 2000, Exhibit 'D' at page 124, there was no necessity of any reference to the University of Mumbai for purpose of determination of equivalence. In this case, we are not concerned with the abstract issue of equivalence. the response of the University of Mumbai in its letter dated 26th April 2001 is in the context of its academic policy. Such response, cannot be made use of to deny Shri R. D. Tamhankar the benefits of GR dated 16th April 1984. The response, in any case, states that Metallurgy subjects are a part of mechanical engineers courses offered by the

university. This response, when read with the specific response issued by the State itself to the MAT in the context of Shri R. D. Tamhankar's specific case, makes it clear that Shri R. D. Tamhankar was deprived of the benefits of GR dated 16th April 1984, without any just cause. The MAT, has given detailed reasons in paragraphs 9, 10 and 11 of the impugned judgment and order dated 1st April 2003. The reasons, are not vitiated by any illegality or perversity.

20] Mr. Walimbe's reference to the GR dated 18th October 2013 is also, quite misconceived. The GR has been issued in an entirely different context and will not apply in the facts which are peculiar to the present case of Shri R. D. Tamhankar. The relief granted to Shri R. D. Tamhankar is no doubt, in the peculiar facts of his case, where, he came to be validly appointed in the year 1987 when there were no recruitment rules in existence. Shri R. D. Tamhankar came to be appointed on the basis of his degree of B. Tech (Metallurgy) precisely because the Irrigation Department was in need of Engineers with such qualifications to undertake testing of gate manufacturing works. In such circumstances, the MAT was quite justified in granting Shri

R. D. Tamhankar, the benefit which he has, by the impugned judgment and order.

21] Accordingly, we see no good ground to interfere with the impugned judgment and order made by the MAT. Writ petition no. 9665 of 2003 is liable to be dismissed and is hereby dismissed. Rule is discharged. Interim order, if any, is vacated. The petitioners State is directed to comply with impugned judgment and order within three months from today, since, by now, Shri R. D. Tamhankar has already retired from service.

22] Writ petition no. 4776 of 2004 and civil application no. 98 of 2016 taken out by Shri R. D. Tamhankar are disposed of as not pressed.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA