

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12327 OF 2016

The State of Maharashtra & Ors. ...Petitioners
vs.
Pramod Dadasaheb Dorkar & Anr. ...Respondents

ALONG WITH
WRIT PETITION NO.1227 OF 2017

Maharashtra Public Service
Commission ...Petitioner
vs.
Pramod Dadasaheb Dorkar & Anr ...Respondent

Mr.N.K.Rajpurohit, AGP for the Petitioner in
W.P.No.12327/2016 and for respondent No.2 in
W.P.No.1227/2017
Mr.Ashutosh M. Kulkarni for the petitioner in
W.P.No.1227/2017
Mr.M.D.Lonkar a/w Ms Leena Patil for the respondent
No.1 in both the petitions.

CORAM : A.S.OKA, &
SANDEEP K. SHINDE, JJ.
DATE : DECEMBER 4, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Rule. The respondents waive service. On the earlier date, submissions were heard and today the petitions have been listed for passing orders.

2 In both the petitions, the challenge is to the same impugned order passed by the Maharashtra Administrative Tribunal (for short "the Tribunal")

on 19th January 2015. The petitioner in Writ Petition No.12327 of 2016 is the State of Maharashtra and the petitioner in Writ Petition No.1227 of 2017 is the Maharashtra Public Service Commission (for short "MPSC"). On the basis of the requisition submitted by the State Government for commencing the process of recruitment to the post of Assistant Motor Vehicle Inspectors, MPSC issued advertisement in the year 2011. The first respondent is the original applicant before the Tribunal. He cleared the preliminary examination conducted by the MPSC but failed to clear the main examination on the ground that he could not secure necessary cut off marks. That is the reason why he was not held eligible to appear for interview and personality test. We may note here that the first respondent is the Diploma Holder in Mechanical Engineering. The contention raised by the first respondent was that MPSC erroneously allowed the Degree Holders to participate in the process of selection and to compete with the Diploma Holders. By the impugned order, drastic directions were issued by the Tribunal directing the MPSC to prepare a fresh list of selected candidates excluding the candidates having a Degree in Engineering. A further direction was issued by the Tribunal that if the first respondent gets necessary rank, he will be given appointment, if necessary by terminating the appointment of a candidate holding a Degree in Engineering.

3 In both the petitions, submissions have been made on merits and on the findings recorded by the Tribunal as well as on the ground that selected candidates holding Degree in Engineering were not made parties to the Original Application and therefore, they were not given an opportunity of being heard. The submission of the learned counsel for the first respondent is that the finding of the Tribunal is that the Degree Holders ought not to have competed with the Diploma Holders and in fact the Tribunal has followed the law laid down by the Apex Court in the case of P.M.Latha and another Vs. State of Kerala and others¹ and therefore, no interference is called for.

4 We have considered the submissions. The question is whether the Tribunal could have granted the relief without giving an opportunity of being heard to the graduate Engineers who were ordered to be excluded from the list of selected candidates. Paragraph 17 of the impugned order shows that the Tribunal was made aware of the fact that the Graduate Engineers were made not parties to the Original Application. The Tribunal has relied upon paragraph 16 of the decision of the Apex Court in the case of P.M.Latha and another (supra). Paragraph 16 itself notes that some of the B.Ed. Appointees who were affected were arrayed as respondents and some of them were represented though all the B.Ed

¹ (2003) 3 SCC 541

appointees were not parties. In the present case, the cause title of the Original Application filed by the first respondent will show that not a single person who was selected and whose qualification was of Bachelor of Engineering was made a party.

5 This aspect has been dealt with by the decision of this Court dated 26th September 2018 in Original Side Writ Petition No.1519 of 2006 in the case of Bharat K. Dehade and ors. V/s. Purushottam Das Sharma and others. The issue before the Division Bench was about the selected candidates being the necessary parties in the Original Application on which the Tribunal passes order by setting aside the entire selection process. In paragraph 24, the Division Bench held thus:

“24] As noted earlier, there is no order available or produced before us to indicate that empanellement of 9 empanelled /appointed employees as the respondents in pursuance of M.P. No.195 of 2002 taken out by the original applicants was in some representative capacity. Admittedly, neither the provisions nor the principles as set out in Order 1 Rule 8 of CPC were ever complied with in the present case. In such circumstances, the CAT was not at all justified in brushing aside binding precedents emanating from the Apex Court on the premise that at least 9 empanelled/appointed employees had been impleaded in some representative capacity. “

6 Thereafter, the Division Bench considered the various provisions including section 22 of the Administrative Tribunal Act, 1995 and the procedural Rules in the context of the applicability of the provisions of the Code of Civil Procedure, 1908 (for short "the said Code").

7 Thus, the view taken is that apart from the fact that the Tribunal established under the said Act of 1995 must follow the principles of natural justice, the principles incorporated in the said Code will apply to the proceedings before the Tribunal.

8 This Court took the view that in such case in which entire selection process is to be set aside, either of the selected candidates must be made parties or by making some of them parties, the procedure analogous to Rule 8 of Order I of the said Code must be followed.

9 As noted earlier, in the decision of the Apex Court in the case of P.M.Latha and another (*supra*), some of the affected candidates having B.Ed were parties and were in fact were heard. In the present case, none of the affected candidates were put to notice and were parties. They were not heard. Thus, only on this point, both the petitions must succeed.

10 The learned counsel for the first respondent stated that he is not aware about the names and

addresses of the selected candidates who are Graduate Engineers and therefore, a direction may be issued to the State Government or MPSC to supply their names and addresses. The said prayer is reasonable and deserves to be accepted.

11 We may note here that as the affected candidates were not heard, we are not going into the merits of the Original Application as the Tribunal will have to go into the merits after hearing the selected candidates who are likely to be affected.

12 Accordingly, we pass the following order:

(I) Impugned Judgment and Order dated 19th January 2015 is quashed and set aside. Original Application No.136 of 2012 is restored to the file of the Maharashtra Administrative Tribunal;

(II) We direct the parties to appear before the Tribunal on Monday 28th January 2019 for fixing the schedule of hearing;

(III) We direct the State Government to furnish a list of selected candidates possessing a degree of engineering along with their addresses to the Advocate for the first respondent on or before 17th January 2019;

(IV) On the date fixed for the appearance of the parties before the Maharashtra Administrative Tribunal, it will be open for the first respondent to implead the affected candidates as parties by carrying out amendment to the Original Application;

(V) If the names and the addresses of all the selected candidates are not made available, it will be open to the Tribunal to implead some of them and take recourse to the procedure analogous to Rule 8 of Order I of the Code of Civil Procedure, 1908;

(VI) All contentions on merits are kept open;

(VII) Considering the fact that the Original Application is of the year 2012, we are sure that the Tribunal will give priority to the disposal of the Original Application;

(VIII) Rule is made partly absolute on above terms.

(SANDEEP K.SHINDE,J.)

(A.S.OKA,J.)