

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9266 OF 2017

The State of Maharashtra and anr. ...Petitioners
Versus
Shri. Satyawan Eknath Salunkhe ...Respondent
WITH

WRIT PETITION NO. 10623 OF 2014

The State of Maharashtra and anr. ...Petitioners
Versus
Shri. Chandrakant M. Kore ...Respondent
WITH

WRIT PETITION NO. 10624 OF 2014

The State of Maharashtra and anr. ...Petitioners
Versus
Shri. Suhas M. Shevae ...Respondent
WITH

WRIT PETITION NO. 10625 OF 2014

The State of Maharashtra and anr. ...Petitioners
Versus
Shri. Dhananjay T. Mane ...Respondent

Mr. N.C. Walimbe, AGP for the State / Petitioners in all the petitions.
Mr. Sanjay Kshirsagar for the Respondents in all the petitions.

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

DATE : 17.07.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule in all these petitions. With the consent of and at the request of learned counsel for the parties, Rule in all these petitions is made returnable forthwith.

3] Learned counsel for the parties, agree that all these petitions can be disposed of by common judgment and order, since the challenge in all these petitions is to the common judgment and order dated 7.10.2013 made by the Maharashtra Administrative Tribunal (MAT), Mumbai disposing of O.A. Nos.233, 234, 235 and 236 of 2012. Therefore, it is only appropriate that all these petitions are disposed of by a common judgment and order.

4] The respondents in each of these matters entered into Government service as Technical Assistant between the year 1978-1980. They cleared the qualifying examination for promotion to the post of Sub-Overseer in the year 1982-1983. On this basis, they were given a deemed date of promotion commensurate with the date they passed their qualifying examination.

5] Thereafter, between the years 1986 to 1992, the respondents, passed the qualifying examination for the promotion to the post of Overseers (now called as Junior Engineer). The respondents were, however, actually promoted as Overseers (Junior Engineers) only on 2.7.2007.

6] The respondents, therefore, applied for grant of deemed date of promotion commensurate to the date of their passing qualifying examination. For this, they relied upon Government Resolution (G.R.) dated 7.6.1965 and certain other G.Rs.. They also pointed out that officers similarly placed had in fact been granted deemed dates of promotion commensurate to the date they passed qualifying examination. They pointed out that in fact some of the officers, who were junior to the respondents were granted deemed dates. They, therefore, based their claim not only upon the various G.Rs., but also contended that the denial of such claim would amount to discrimination and consequently, violation of Article 14 of the Constitution of India.

7] The petitioners – State, which was the respondent before the MAT resisted the claim of the respondents. The State pointed out that there could be no comparison between the cases where deemed date of promotion had been granted to the cases of respondents. They pointed out that in terms of G.R. dated 25.9.2002, Shri. D.N. Thorat and others vis-a-vis whom the respondents had claimed a discrimination, were in fact qualified Surveyors already possessing technical qualifications. The State pointed out that the case of D.N. Thorat and others was therefore, not comparable to the case of the respondents.

8] Mr. Walimbe, learned AGP for the petitioners- State, has reiterated the aforesaid contentions. He submits that the view taken by the MAT suffers from serious errors because the MAT failed to appreciate that case of D.N. Thorat and 17 others was different from the respondents. He points out that D.N. Thorat and others were already qualified and therefore, they were given the benefit of deemed dates. He points out that passing of professional examination was a must in terms of recruitment rules applicable and therefore, unless the respondents were to

have passed such examination, there was no question of even considering their cases for promotion. He points out that in such circumstances, the MAT was not justified in granting the respondents deemed date of promotion by comparing the case of the respondent with that of Shri. D.N. Thorat as reflected under G.R. dated 25.9.2002.

9] Mr. Sanjay Kshirsagar, learned counsel for the respondents, submits that even in terms of GRs relied upon by the petitioners- State, it is very clear that the deemed date has to be granted with effect from the date of passing of professional examination. He points out that there is no serious distinction between D.N. Thorat and 17 others referred to in the G.R. dated 25.9.2002 on one hand and the respondents on the other. For all these reasons, Mr.Kshirsagar submits that these petitions may be dismissed.

10] The rival contentions now fall for our determination.

11] We are unable to appreciate the distinction between Shri. D.N. Thorat and 17 others referred to in the G.R. dated

25.9.2002, which have been admittedly granted benefit of deemed date of promotions and the respondents in the present matters. Even if we were to assume that Shri. D.N. Thorat and 17 others were qualified on the date of their entry in Government service that by itself, is not some distinguishing feature. This is because in terms of the G.Rs. relied upon by the petitioners themselves the deemed dates are required to be granted only from the date Sub-Overseers passed the professional examination as prescribed. Admittedly, the respondents have passed this professional examination as prescribed on various dates between 1986 and 1992. Admittedly, the respondents, claimed for deemed dates commensurate to the date of their passing of professional examination as prescribed and not from any earlier dates, depending upon the date of their entry into Government service.

12] The MAT has quite correctly pointed out that some of the persons referred to in the G.R. dated 25.9.2002 are in fact quite junior to the respondents. The MAT, in the facts and circumstances of the present case, has quite correctly held that denial of deemed dates to the respondents will

amount to discrimination against the respondent, thus, on the basis of G.Rs. relied upon by the parties as well as in order to avoid any discrimination, the respondents were eligible for the deemed dates and therefore, there is no good ground to interfere with the impugned judgment and order made by the MAT.

13] In the present case, we are unable to see any serious distinction between the cases of the respondents and the cases of D.N.Thorat and 17 others. Even the MAT has quite correctly held that there was no distinction between the two sets of employees and therefore, grant of deemed dates to employees who are junior to the respondents and denial of deemed dates to the respondents, will amount to discrimination. Even the G.R. relied upon by Mr. Walimbe also provides for grant of deemed dates depending upon the passing of professional examination. The respondents have also claimed and upon granted the deemed dates by the MAT commensurate the date of passing of their professional examination and not earlier. There is, accordingly, no reason to interfere with the impugned judgment and order.

14] For all the aforesaid reasons, we dismiss all the petitions. Rule in all these petitions is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
Sadanand Sherla
Date: 2018.07.23
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