

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

WRIT PETITION NO. 11473 OF 2015

Abhay A. Kshirsagar ...Petitioner
Versus
The Superintendent Engineer
and anr. ...Respondents

Mr. Pratap Patil for the Petitioner.
Mr. N.C. Walimbe, AGP for Respondent Nos.1 and 2/ State

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

DATE : 23.07.2018.

ORAL JUDGEMENT:

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 7.10.2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing O.A. No. 6 of 2014 instituted by the petitioner in order to question his reversion from the post of Junior Engineer to Civil Engineering Assistant.

4] The petitioner's father, while working as a Master Clerk in the office of Sub-Divisional Engineer, Sangli died in harness and the petitioner, by order dated 27.8.2009 was granted compassionate appointment as Civil Engineering Assistant in the Public Works Department (PWD). By subsequent order dated 19.7.2013, however, the petitioner was appointed as Junior Engineer, with effect from 27.8.2009, *inter alia*, on the ground that the petitioner possessed a degree in Engineering. After four months, however, the respondents recalled the order dated 19.7.2013 and reverted the petitioner as Civil Engineering Assistant with effect from 27.8.2009 on the ground that a compassionate appointment can be made only to Group - C or Group-D post and the post of Junior Engineer was a Group - B post. The petitioner instituted O.A. No. 6 of 2014 to question the order dated 19.11.2013, by which, he came to be reverted. The MAT, by order dated 7.10.2015, has dismissed the O.A.. Hence, the present petition.

5] Mr. Pratap Patil, learned counsel for the petitioner, submits that the post of Junior Engineer, in terms of the executive instructions existing at a time of the petitioner's

appointment on 27.8.2009 was a Group – C post. He points out that in any case, except for the PWD and Irrigation Department, the post of Junior Engineer in several other departments of the Government is designated as Group- C post. He submits that the Government is practising discrimination by indicating the post of Junior Engineer in some departments as Group-B and others as Group-C post. Mr. Patil states that it is for this reason that the petitioner in the present petition, by way of prayer clause (b) has applied for striking down Rules of 1998, which declared the post of Junior Engineer in PWD as Group-B post.

6] Mr. Patil submits that from the pay scale of the post of Junior Engineer also, the post can be treated as Group-C post. For all these reasons, Mr. Patil submits that the order reverting the petitioner from the post of Junior Engineer to Civil Engineering Assistant is illegal, arbitrary and unconstitutional. He submits that the MAT was not at all justified in not interfering with the reversion order.

7] Mr. Walimbe, learned AGP for the respondents – State, submits that even on the date the petitioner came to be

appointed as Civil Engineering Assistant on compassionate basis, the Recruitment Rules 1998 had clearly classified the post of Junior Engineer as Group-B post. Mr. Walimbe submits that in terms of the Government Policy of compassionate appointment, which is consistent with rulings of the Hon'ble Supreme Court, there is no question of making compassionate appointment to Group - A or Group-B post. He points out that departmental action is underway against the officials who made the erroneous order dated 19.7.2013.

8] On the basis of aforesaid, Mr. Walimbe submits that there is absolutely no legal infirmity in the view taken by the MAT and therefore, this petition may be dismissed.

9] The rival contentions now fall for our determination.

10] There is no dispute that the petitioner came to be appointed as Civil Engineering Assistant on 27.8.2009 on compassionate appointment. On the said date, Junior Engineer (Civil), Group-B, non-gazetted in the Public Works Department and the Irrigation Department, the Recruitment

Rules, 1998 were very much in force. These Rules, had classified the post of Junior Engineer in PWD as a Group-B post. Therefore, there can be no serious dispute that the post of Junior Engineer in PWD was a Group-B post in terms of Recruitment Rules of 1998.

11] Mr. Patil was unable to point out any executive instructions, which had classified the post of Junior Engineer in PWD as a Group- C post. Assuming that there existed any such executive instructions or G.Rs., the same cannot run counter to what is set out in the Recruitment Rules of 1998, which are, admittedly, Recruitment Rules framed under the proviso to Article 309 of the Constitution of India. It is settled position in law that in case of any conflict between the rules framed under the proviso to Article 309 of Constitution of India and executive instructions or G.Rs. issued by the State Government, the rules must prevail.

12] There is also no dispute that in terms of the Policy of the State Government as also, the rulings of the Hon'ble Supreme Court, the compassionate appointment can be made only to Group-C or Group-D posts. Therefore, the

petitioner's appointment as Civil Engineering Assistant with effect from 27.08.2009, may have been the correct posting on compassionate basis, since, the post of Civil Engineering Assistant is a Group-C or Group-D post. The subsequent order dated 19.7.2013 purporting to appoint the petitioner, again on compassionate basis, to the post of Junior Engineer with retrospective effect from 27.8.2009 was not a correct order and therefore, the same was quite correctly recalled by the State Government on 19.11.2013. The extraordinary and equitable jurisdiction under Article 226/227 of the Constitution of India cannot be exercised to revive an incorrect order. There is no error in the view taken by the MAT, in the facts and circumstances of the present case.

13] In ***Bhavani Prasad Sonkar Vs. Union of India - 2011 (4) SCC 209***, the Hon'ble Supreme Court has held that Schemes for compassionate appointment in the nature of exception to general rule that appointments to the public post must be in consonance with the mandate of Article 14 and 11 of the Constitution of India, must be strictly construed and confined only to the purpose it seeks to

achieve. The compassionate appointment must therefore, be confined only to lowest category i.e. Class-III or Class-IV posts.

14] In the original application before the MAT, the petitioner had, not challenged the 1998 Rules. Accordingly, it is not possible to entertain the relief of striking down of the Recruitment Rules, 1998 for the first time in this matter and that too without any factual foundations laid in the petition.

15] For the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. This petition is dismissed. Rule is discharged. The interim relief, if any, stands vacated. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)