

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

WRIT PETITION NO. 5591 OF 2016

The State of Maharashtra	...Petitioner
Versus	
Padmakar I. Sukhadeve	...Respondent

Mr. O.M. Kulkarni , AAGP for the Petitioner/State.
Mr. V.V. Pai for the Respondents.

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

DATE : 20th MARCH 2018.

ORAL JUDGMENT:

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 impugned judgment and order dated 26th June 2014 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing the respondent's O.A. No. 942 of 2012. By the impugned judgment and order, the MAT, has directed the petitioner- State to convene a review Departmental

Promotion Committee (D.P.C.) and consider the case of the respondent for deemed date of promotion for the post of Sub-Divisional Engineer (S.D.E.) in the light of the directions given.

4] In terms of the recruitment rules for promotion to the post of S.D.E., an officer in the cadre is required to pass the prescribed professional examination. The respondent appeared for such professional examination which was held between 29th December 1987 and 1st January 1988. The result of such professional examination was declared on 17th May 1988, in which, the respondent was declared as passed.

5] The D.P.C. for promotion to the post of S.D.E., however, held meetings on 8th February 1988, 22nd February 1988 and 15th April 1988. Since, by these dates, the results of the professional examination, which the respondent had already answered, had not been declared, the D.P.C. made no recommendation for the promotion of the respondent. However, recommendations were made for promotion of the persons junior to the respondent and in

pursuance of the same, such juniors were promoted to the post of S.D.E. on 12th October 1988.

6] The respondent, addressed representations to the petitioner pointing out that the respondent ought not to be prejudiced for the delay in declaration of result of the professional examination. The representations were finally turned down by the order dated 1st January 2011. The respondent, therefore, instituted O.A. No. 942 of 2012 to question the order dated 1st January 2011 and to seek for deemed date of promotion to the post of S.D.E., since thereafter, the respondent had been promoted to the post of S.D.E. The MAT has upheld the contention of the petitioner by the impugned judgment and order. Hence, the present petition.

7] Mr. Kulkarni, learned AAGP for the petitioner, submits that since the respondent's juniors had already cleared the professional examination earlier than the respondent, the D.P.C. was justified in recommending their cases for promotion in preference to the case of the respondent. Mr.Kulkarni submits that nothing prevented the respondent

from clearing the professional examination earlier, in which case his juniors would not have secured a promotion earlier to the respondent. Mr. Kulkarni submits that the relief granted by the MAT in the impugned judgment and order, is in excess of jurisdiction and therefore, the same may be set aside.

8] From the perusal of the impugned judgment and order, we find that the MAT has relied upon its earlier judgment and order dated 18th August 2000 in O.A. No. 944 of 1993, in which, the MAT has taken the view that an officer is deemed to have successfully cleared the professional examination on the last date of such examination, notwithstanding the fact that the result of such examination may have been declared later. Mr.Kulkarni was unable to make any statement as to whether the State Government had challenged the judgment and order dated 18th August 2000 in O.A. No. 944 of 1993. Mr. Pai, learned counsel for the respondent, submits that to the best of his knowledge, the said decision was never challenged by the State Government, but rather, such decision, was accepted and acted by the State

Government. If the MAT, has only followed its earlier decision, then, it cannot be said that the MAT has committed any jurisdictional error so as to warrant interference under Articles 226 and 227 of the Constitution of India.

9] Further, the MAT, in the impugned judgment and order, has noted that the case of the respondent was not placed before the D.P.C. on 1st April 1989, by which time, there is no dispute whatsoever that the respondent had passed the professional examination. Even Mr. Kulkarni could offer no cogent explanation as to why the case of the respondent was not placed before the D.P.C. on 1st April 1989.

10] The MAT, taking into consideration the aforesaid two aspects, has merely directed the placement of the case of the respondent before a review D.P.C. to be constituted to reconsider the position of the respondent as on 1st April 1988 and 1st April 1989 (if necessary) and to determine whether the respondent was eligible to be promoted to the post of S.D.E.. There does not appear to be any serious

jurisdictional error in the grant of such limited relief to the respondent. Ultimately, the matter has been left for the determination of the D.P.C., no doubt, in the light of the decision of the MAT in the impugned judgment and order.

11] Accordingly, the writ petition is dismissed. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)