

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2561 OF 2014**

**Smt Supriya Sattesh Jadhav
Vs.**

..Petitioner

Bombay Electric Supply & Transport & Anr

..Respondents

Mr. V. M. Bhate for the Petitioner

**Mr. P. M. Palshikar a/w Mr. Arsh Mishra I/b M.V. Kini & Co. for the
Respondent No.1**

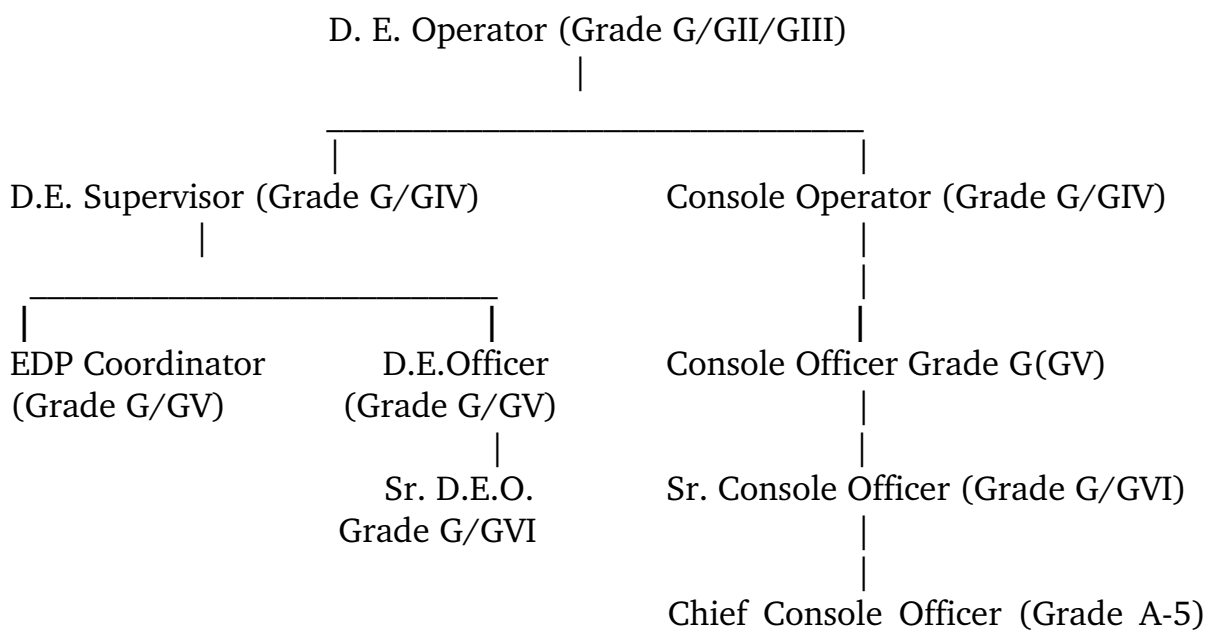
**CORAM :R. M. SAVANT, &
K. K. SONAWANE, JJ
DATE : 5th SEPTEMBER, 2018**

P.C.

1 The Writ Jurisdiction of this Court is invoked for setting aside the promotion of the Respondent No.2 to the post of Senior Data Entry Officer Grade G/GVI in the EDP department of the Respondent No.1. The second relief sought by the Petitioner is a direction to the Respondent No.1 to promote the Petitioner to the post of Senior Data Entry officer Grade G/GVI in the EDP Department. At the outset, it is required to be noted that the Respondent No.2 has been promoted to the said post by order dated 20-3-2014. He has taken charge of the said post and has been acting as such since then. However, the appointment of the Respondent No.2 as stated in the order is made subject to the final outcome of Writ Petition No.8452 of 2004.

2 In so far as the said post of Senior Data Entry officer Grade G/GVI

is concerned, the said post is in the EDP department of the Respondent NO.1 which is an undertaking established under the Mumbai Municipal Corporation Act, 1988 (for short the MMC Act). The hierarchy in the said department and the promotional avenues available to the personnel of the said department is for the sake of ready reference reproduced hereinunder:



The aforesaid hierarchy indicates that the lowest post is of D.E. Operator (Grade G/GII/G/GIII). The next post is D.E. Supervisor (Grade G/GIV). Thereafter the next post is of EDP Coordinator(Grade G/GV). Whereas on the other side equivalent post is of D.E.Officer (Grade G/GV). However there are no further avenue of promotions for an EDP Coordinator, whereas there is one more avenue for promotion for D.E. Officer i.e. to the post of Senior Data Entry officer Grade G/GVI. We are not concerned with the

other branch i.e. from the post of Console Operator to the post of Chief Console Officer for the purposes of the present Petition. Hence in so far as the channel of the Data Entry Operator are concerned, there was an anomaly in as much as on one side the last or highest post was of EDP Coordinator, whereas for a Data Entry Officer the last or highest post is of Senior Data Entry Officer.

3 At this stage it is required to be noted that the incumbent of the said post of Senior Data Entry Officer Mr. N. V. Karanjkar superannuated some time in the year 2009 resulting in the process of filling up of the said post of Senior Data Entry Officer in the Respondent No.1 undertaking being initiated. The Petitioner has annexed to the above Petition the file notings which she has obtained under the Right to Information Act which indicate that it was the Petitioner who was being considered for the post of Senior Data Entry officer Grade G/GVI in the year 2012. It seems that a representation came to be made to the Competent Authority i.e. the General Manager of the Respondent No.1 undertaking by the Association of the SC and ST Employees of the Respondent No.1 undertaking pointing out the fact that the Respondent No.2 was required to be promoted as there was no avenue of promotion to him and that he was senior most in the said department. The said representation it seems had its effect in as much as the process of amending the BEST Officers Recruitment Rules 2012, came to be initiated. The amendment in the regulations was made for the post of Data Entry Operator, post of EDP

Coordinator and lastly to the post of Senior Data Entry Officer which is the post in question with which we are concerned. In so far as the said post is concerned, the qualification was amended so as to include the EDP Coordinator. The earlier qualification and the amended qualification for the said post are juxtaposed hereinunder for the sake of ready reference:

Earlier Qualification & Experience	Amended Qualification & Experience for Internal Candidates
A candidate should- 1. have minimum S.S.C. or equivalent qualification. 2. 5 years experience in Data Processing Work, out of which 2 years should be in Grade G/GV having worked as Data Entry Officer.	A candidate should - 1. have minimum S.S.C. or possess equivalent qualification. 2. Possess 5 years experience in Data Processing Work, out of which 2 years should be in Grade G/GV having worked as Data Entry Officer or EDP Coordinator.

4 Hence by the amendment Respondent No.2 became eligible for the said post of Senior Date Entry Officer. The said amendment was carried out in exercise of the powers conferred by Section 460(v)(i) of the MMC Act, 1988, which confers powers on the BEST committee to frame regulations prescribing any other conditions of service for the said officers and servants other than those which are mentioned in clauses (a) to (h) of the said provision. The BEST committee approved the said amendment on 7-1-2014, thereafter the amendment was placed before the Corporation which approved the

amendment on 24-1-2014. It is on the basis of the said amendment that the case of the Respondent No.2 was considered for promotion and he was accordingly promoted as indicated above on 20-3-2014.

5 It was the submission of the Learned Counsel for the Petitioner Mr. Bhate that all along in the year 2012 i.e. after the retirement of incumbent Mr. Karanjkar, it was the Petitioner who was being considered for promotion to the said post of Senior Data Entry Officer and it is only on the intervention of the Association that an amendment came to be carried out in the regulations in question so as to promote the Respondent No.2 to the said post. In support of the said contention the Learned Counsel sought to place reliance on the file notings which the Petitioner as indicated above has obtained under the Right to Information Act. It was also the submission of the Learned Counsel that the Petitioner has been discriminated against as she is a woman.

6 Per contra the Learned Counsel Mr. Palshikar appearing for the Respondent No.1 would contend that the regulations having been amended with the approval of the highest decision making body i.e. Municipal Corporation and the Respondent No.2 thereafter being promoted in terms of the amended rules, there is no merit in the challenge in the above Writ Petition. The Learned Counsel sought to demonstrate to us as to the manner in which the amendment was carried out to the regulations.

7 We have heard the Learned Counsel for the parties and considered the rival contentions. As indicated above, the qualifications or the eligibility criteria for the post of Senior Data Entry Officer was changed by a process which was carried out in which process the amended regulations was approved by the BEST committee as well as the Municipal Corporation, thereby providing an avenue for promotion to the EDP Coordinator to the post of Senior Data Entry Officer. It is required to be borne in mind that there was an anomaly in so far as the avenue of promotions are concerned in the said department i.e. D.E Department of the BEST. That anomaly can be said to have been removed by bringing the post of EDP Coordinator and Data Entry Officer on par, in so far as promotion to the post of Senior Data Entry Officer is concerned, we are therefore unable to accept the contention of the Learned Counsel for the Petitioner that it is only to favour the Respondent No.2 that the amendment was made to the rules, though the amendment may have been initiated on account of the representation made by the Association. The framing of the rules and the amendments thereof are obviously in exercise of powers conferred by Section 460(v) of the MMC Act. The rules are therefore in the nature of delegated legislation and therefore whether malafides can be attributed in the matter of carrying out the amendment is questionable. Once the rules were amended and brought into force, the same paved the way for the appointment of the Respondent No.2 who is admittedly senior to the

Petitioner in the feeder post and therefore the Petitioner cannot contend that she is senior to the Respondent No.2 considering the fact that considering the date of joining the BEST the Petitioner is senior to the Respondent No.2. We also did not find any material to indicate that the Petitioner has been discriminated against in view of the fact that she is a woman.

8 In our view therefore, there is no illegality committed by the Respondent No.1 in the matter of promoting the Respondent No.2 to the post of Senior Data Entry Officer having regard to the regulations which are applicable as also considering the fact that the Respondent No.2 is senior to the Petitioner in the feeder post. In that view of the matter, we do not find this a fit case for exercise of our writ jurisdiction. The Writ Petition is accordingly dismissed.

[K. K. SONAWANE, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav

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by Meera
Mahesh Jadhav
Date: 2018.09.07
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