

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

59 WRIT PETITION NO.3894 OF 2018

Nagnath s/o Janardhan Panchal,
Age: 59 years, Occu: pensioner,
R/o Omerga-Yeladevi,
Tq. Ahmedpur, Dist. Latur

Petitioner

versus

1. The State of Maharashtra
through its Secretary,
Department of Water Supply & Sanitation,
Mantralaya, Mumbai

2. Maharashtra Jeevan Pradhikaran,
Express Tower, Near Mantralaya,
Mumbai
Through it/s Member Secretary

3. The Senior Accounts Officer,
Maharashtra Jeevan Pradhikaran,
IIIrd floor, Cidco Bhavan (south cell)
New Mumbai 400 614

4. The Superintendent Engineer,
Maharashtra Jeevan Pradhikaran Circle,
Aurangabad
Sahakar Vaibhav, Ist Floor, New Mndha,
Aurangabad

5. The Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Latur Division, Latur

Respondents.

Mr. Jadhavar Santosh S. Advocate for Petitioner
Mr. S.B. Yawalkar, Assistant Government Pleader for Respondent No.1
Mr. Bakshi Deepak P., Advocate for Respondent Nos.2 to

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CORAM : **S. V. GANGAPURWALA & AVINASH G. GHAROTE, JJ.**

Date: December 16th, 2019

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ORAL JUDGMENT

(Per: S.V. Gangapurwala, J)

1 Rule. Rule made returnable forthwith. With the consent of
learned counsel for the respective parties heard finally at
admission stage.

2 Mr. Jadhavar learned counsel submits that the petitioner was appointed as a tracer on 11.2.1985. The petitioner was granted time bound promotional pay scale after completing 12 years of service under order dated 6.7.1998 w.e.f. 1.10.1997. Learned counsel submits that the only reason for withdrawing benefits is that the petitioner did not pass the professional examination for the post of tracer. According to the learned counsel, respondent neither conducted any examination, nor there was any facility available with them. It is accepted by the respondents under circular dated 23.3.1995. Learned counsel submits that the petitioner is also entitled for second ACP benefit from 2009.

3 Mr. D.P. Bakshi, learned counsel for respondents submits that the petitioner has not passed the professional examination for the post of tracer and as such, he is not entitled for the benefits of time bound promotional pay scale. It is mandatory that the person appointed on the post of tracer passes the professional examination within six years in three chances, failing which he shall not be considered for the next promotion of assistant draftsman. The petitioner could pass the professional examination only on 19.9.2016 and thereafter he has retired on 31.12.2017. No error has been committed by respondents while passing the impugned order.

4 We have considered the submissions advanced by the

respective counsel. The department has issued a circular/letter dated 23.2.1995 to the effect that there was no facility for giving training or holding the requisite examination for the post of tracers and as such, the persons at Aurangabad, Akola, Pune could not appear for the examination. As such, decision was taken to consider those persons working with the institution that if they satisfy all other criteria then they shall be considered to the promotional post *de-hors* passing the departmental examination.

5 In the light of above, it would not be open for the respondents to turn around and content otherwise. In view of the same, the impugned communication is quashed and set aside.

6 Rule is made absolute in terms of prayer clause 'B'.

7 As far as grant of second benefit of ACP i.e. grant of promotional pay scale on completion of 24 years is concerned, the petitioner shall make application with the respondents. On receipt of application, the respondents shall take decision upon it within a period of three months. The respondents may proceed further with regard to pensionary benefits of the petitioner.

(AVINASH G. GHAROTE, J)

(S. V. GANGAPURWALA, J)