

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5559 OF 2016

PRALHAD RAMBHAU DHAGE AND OTHERS
VERSUS
THE CHIEF EXECUTIVE OFFICER AND ANOTHER

...
Advocate for Petitioners : Shri Katneshwarkar P.R.
Advocate for Respondent 2 : Shri Sonwane Vilas D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11, 2019
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PER COURT :-

1. The petitioners are aggrieved by the order dated 7.5.2016, passed by the Additional Divisional Commissioner, Aurangabad, by which, the decision of the Chief Executive Officer, Zilla Parishad, Aurangabad dated 18.7.2011 was sustained. The effect of these orders is that these petitioners, who were working as Mistri - Grade I/II were held to be dis-entitled for promotion as Civil Engineering Assistant, which is a Class III position.

2. These petitioners find themselves at par with Gorakhnath Punjaba Ingle, who has independently filed Writ Petition No. 8352 of 2015, which has been allowed by the learned Division Bench on 28.2.2017.

3. There is no dispute that these petitioners in this petition had also

approached the Industrial Court, along with Gorakhnath. The ULP Complaint was disposed off concluding that these petitioners will have to approach the Additional Commissioner, Aurangabad by preferring an Appeal under the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1962. All these petitioners along with Gorakhnath were before the Additional Commissioner, who has rejected their appeals by the impugned order dated 7.5.2016. The petition filed by Gorakhnath was already pending from 2015. He, therefore, amended his petition and assailed the order dated 7.5.2016 to his extent. By the order dated 28.2.2017, his petition was allowed and by setting aside the order of the Chief Executive Officer and the order dated 7.5.2016, the learned Division Bench has granted him the reliefs which are now being sought by these petitioners on the principle of parity.

4. Shri Sonawane, learned Advocate appearing on behalf of respondent No.2 - Zilla Parishad, strenuously submits that none of these persons including Gorakhnath, were ever promoted to the position of Mistri-Grade I or Mistri-Grade II, which are otherwise at par with each other. They were only given a scale of Mistri -Grade I/II. These petitioners were originally working as Mukadam, Sewage Cleaner etc. The Kalelkar Committee had recommended granting of scale and hence these persons were subsequently granted the scales of Mistri. Since there was a unification of seven categories in Class IV, those eligible for

being promoted as Civil Engineering Assistant, would be considered for such promotion. There is no dispute that these petitioners have passed the requisite examination.

5. Shri Sonawane further submits that the learned Division Bench has entertained the case of Gorakhnath only because he had superannuated when the litigation was going on. The reliefs granted to him cannot be granted to these petitioners as they are not at par with Gorakhnath.

6. I do not find any substance in the submissions recorded as above since the impugned order dated 18.7.2011 passed by the Chief Executive Officer, Zilla Parishad indicates that all these petitioners along with Gorakhnath were earlier working in the categories of Gangman / Mukadam / Sewage Cleaners / Attendants and after unification were placed in the Mistri Grade. Shri Katneshwarkar clarifies that Shri V.V. Ingale who is at Sr. No.10 in the said list mentioned in the order dated 18.7.2011 was an attendant and cannot be equated with these petitioners and Gorakhnath. He is not a petitioner in this case.

7. I find it appropriate, for the sake of convenience, to reproduce the order passed by the learned Division Bench in the case of

Gorakhnath as under:-

" The contention of the petitioner is that petitioner was absorbed as Civil Engineering Assistant in the year 2005. Vide order dated 18.7.2011 the petitioner was reverted as Mistri Grade I. The petitioner had challenged the same before the Industrial Court. The Industrial Court granted stay. During the operation of the orders of stay, the petitioner retired on attaining age of superannuation on 31.7.2014.

2. Thereafter the Industrial Court directed the petitioner to avail the remedy of appeal before the Divisional Commissioner. The petitioner approached before the Divisional Commissioner. The Divisional Commissioner dismissed the appeal. The said order is assailed in the present petition.

3. Mr. Patil, learned counsel for the petitioner states that the petitioner was working as Mistri Grade I and was getting salary of Mistri Grade I even on 5.12.2003. Learned counsel submits that apart from the fact that the petitioner was working as a Mistri Grade I even as per the Government Resolution dated 28.10.1994 the petitioner was eligible to be appointed as Civil Engineering Assistant. The petitioner possessed all the necessary qualifications. The said Government Resolution is also relevant. Learned counsel submits that while officiating on the post of Civil Engineering Assistant the petitioner had retired and even as per the Maharashtra Civil

Services Rules the pension is to be fixed on the basis of last salary drawn. The last salary drawn by the petitioner was of the post of Civil Engineering Assistant.

4. *Mr. Rajput, learned counsel and Mr. Bharaswadkar, learned A.G.P. for respondents submit that the petitioner was working on the post of Mukadam, however, as per the Government Resolution dated 29.9.2003 the principle of 'Kamanusar Hudda and Huddyanusar Vetanshreni' was applied. Para 4 of the said Government Resolution is relevant which states that such a person would not be brought on regular establishment/cadre. Only the pay scale of Mistri Grade I is to be given and not actual posting of Mistri Grade I. The post of Mukadam was not one of the 7 cadres which were unified as Civil Engineering Assistant. As the petitioner worked as Mukadam he could not have been absorbed as Engineer. The order of absorption was wrongly passed. According to the learned counsel as the appointment/absorption of the petitioner as Civil Engineering Assistant was ab initio void, the petitioner was reverted. The said order is correctly passed. Even by the Commissioner the said order is upheld. Under the Circular, dated 23.8.2010 the Government has clarified the said aspect that the persons who are working on the basis of the principle of 'Kamanusar Hudda and Huddyanusar Vetanshreni' are not to be brought on the establishment of Civil Engineering Assistant. Pursuant to the said clarification the action has been taken of reversion. The same is legal and valid.*

5. We have considered the submissions. The Government Resolution dated 28.10.1994 clause I reads as under:-

“(१) दिनांक १.१.८९ रोजी शासन सेवेत कार्यरत आसलेल्या व शासकीय तांत्रिक संस्थेमार्फत (Govt. Technical Institute) घेण्यात आलेल्या स्थापत्य अभियांत्रिकी सहायकाला एक वर्षाचा अभ्यासक्रम ज्यांनी उत्तीर्ण केला आहे अशा सर्व इच्छुक कर्मचाऱ्यांचे पद अथवा आस्थापनेचे स्वरूप विचारात न घेता खास बाब म्हणून त्यांना स्थापत्य अभियांत्रिकी सहायक संवर्गात समाविष्ट करण्यात यावे.”

It appears that the petitioner was possessing the said qualification referred therein. It would appear that at the time of retirement the petitioner was working as a Civil Engineering Assistant and was drawing pay scale of Civil Engineering Assistant. The order of reversion was stayed and the Commissioner has dismissed the appeal after the petitioner had retired from service. The petitioner is entitled for pension on the basis of last salary drawn.

6. If the case of the respondent is accepted that the petitioner could not have been considered for the post of Civil Engineering Assistant as the petitioner was not given appointment in the cadre of Mistri Grade I but was only paid salary of Mistri Grade I, then the order of reversion ought to be on the post of Mukadam, but the order of reversion also states that the petitioner is reverted to the post of Mistri Grade I. The post of Mistri Grade I along with other 6 posts were unified and formed one cadre of Civil Engineering Assistant. The clarification in the year 2010 is much later and the petitioner is absorbed as Civil Engineering Assistant. It is not disputed that in the year

2003 the petitioner was being paid pay scale of Mistri Grade I, but was also being considered as Mistri Grade I, may be on the principle of 'Kamanusar Hudda and Huddyanusar Vetanshreni'.

7. Clause (5) of the Government Resolution, dated 21.11.2003 relied by the respondents reads as under :-

“(५) यावर होणारा खर्च संबंधित कर्मचार्यांच्या वेतनावरील खर्च ज्या लेखाशिर्षाखाली खर्च टाकला जातो त्या लेखाशिर्षाखाली मंजूर असलेल्या अनुदानातून भागविण्यात यावा . ”

8. Considering all aforesaid conspectus of the matter, the impugned order dated 18.7.2011 reverting the petitioner and the subsequent order dated 7.5.2016 passed by respondent no.3 are quashed and set aside. It is not disputed that till the retirement the petitioner was paid salary of Civil Engineering Assistant. Respondents shall pay the pension and pensionery benefits to the petitioner as attached to the post of Civil Engineering Assistant.

9. Writ Petition accordingly allowed in above terms. No costs."

8. It is, therefore, apparent that the learned Division Bench considered all objections of the Zilla Parishad, including that Gorakhnath was working as a Mukadam and the position of Mukadam was not amongst the seven categories, which were unified as Civil Engineering Assistant. This objection was overruled in the said order

and it was concluded that Gorakhnath was entitled to the scale and salary of a Civil Engineering Assistant. His reversion to the category of Mistri, by the impugned order dated 18.7.2011, after having been promoted as Civil Engineering Assistant in 2007, was held unsustainable. These petitioners are identically situated.

9. Considering the above, this petition is allowed and both the impugned orders dated 18.7.2011 and 7.5.2016 are quashed and set aside.

(RAVINDRA V. GHUGE, J.)

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akl/d