

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO.11065 OF 2015

SANJAY BALIRAM CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Avishkar S. Shelke.
AGP for Respondent Nos.1 & 2: Mr. S. P. Tiwari.
Advocate for Respondent No.3 : P. S. Patil.

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CORAM : **T. V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATE : 11th January, 2019.

ORDER: (Per T. V. Nalawade, J.)

. The petition is filed for relief of quashing and setting aside the communications made with the Petitioner by Zilla Parishad, Respondent No.3 on 29th September, 2014 and 28th November, 2014 and also for declaration that the Petitioner was not required to pass Maharashtra Accounts Clerk Examination as he was appointed directly on the post of Senior Assistant Accountant by nomination. Relief is also claimed to set aside the order of reversion made against the present Petitioner by Zilla Parishad on 22nd May, 2007.

2 Both the sides are heard.

3 It is the case of the Petitioner that as per the Maharashtra Zilla Parishad District Service Rules, he could have got higher post like Junior Accounts Officer, Grade-II of Class-III having scale of Rs.5,000/- to Rs.8,000/- provided that he had passed departmental examination and he had three chances during the period of two years. It is contended that when he applied for permission to appear for examination in the year 2005, his application was rejected for the reason that he had not passed the exam for accounts clerk. It is contended that as per Rules, it was not necessary for him to pass that exam as he was recruited on the post of Senior Assistant (Accounts) directly by nomination. It is contended that as per Rules, initially promotion was given to him from original post to the post of Junior Accounts Officer, but after expiry of the aforesaid period given for passing the examination, he was reverted to the original post by giving reason that he had not passed the examination for getting higher post. It appears that as per the Service Conditions and the Rules, aforesaid Rules, it is not necessary to pass the said examination if the employee completes 45 years of age and after that as per the seniority he gets the higher post when the post is available. The learned counsel for Petitioner submitted that the decision of denial of permission to appear

for examination on aforesaid ground was not legal and so it needs to be presumed that he had passed the said exam and accordingly, he needs to be given promotion. Alternatively, it was submitted that he needs to be given promotion without considering the seniority of other employees as it was not his fault due to aforesaid circumstances.

4 It appears that after passing of order of reversion on 22nd May, 2007, the Petitioner had filed Writ Petition No.1378 of 2008, but this Court held that there was no infirmity in the order. This Court has carefully gone through the Rules and it can be said that as per the Rules, it was not necessary for the Petitioner to pass other exam as he was appointed by nomination directly to the post of Senior Assistant (Accounts). It can be said that not only the department, but his Court committed mistake in appreciating the Rules. Another writ petition bearing Writ Petition No.3090 of 2014 was filed by the Petitioner for relief of giving direction to the Zilla Parishad to decide the representation filed on 29th March, 2011. Though the direction was given, this representation is rejected by the Zilla Parishad.

5 It can be said that there was right to the Petitioner to appear for the said examination, but it cannot be said that it needs to

be presumed that he could have or had passed the exam and accordingly, seniority needs to be given to him. At present, giving the relief claimed by the Petitioner will disturb the seniority of more than 10 employees as per the submissions made. The alternate submission also cannot be accepted. In such case, the Petitioner could have claimed only some compensation as some right like right to appear for examination was not allowed to be exercised. No such relief is claimed.

6 The learned counsel for Petitioner placed reliance on the observations made by the Apex Court in the case reported as **2005 AIR (SC) 1167**, (*Deb Narayan Shyam Vs. State of West Bengal*). The facts of that case were different and the point involved was also different. In the present matter, in view of peculiar facts of the present matter, this Court holds that no relief can be given. In the result, the petition stands dismissed.

[SUNIL K. KOTWAL, J.]

[T. V. NALAWADE, J.]

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