

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**114 WRIT PETITION NO.13480 OF 2018
WITH CA/477/2019 IN WP/13480/2018**

DINESH KESHAVRAO JADHAV AND ANOTHER ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER ..RESPONDENTS

...
Mr. Chandrakant R. Thorat, Advocate for the
Petitioners.

Mr. V. D. Sapkal, Advocate for Applicant in
CA/477/2019.

Mr. S. G. Karlekar, AGP for Respondents-State.

Mr. Zareef Khan Pathan, Advocate for Respondent
No.2.

...

**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATED : 09th SEPTEMBER, 2019.

PER COURT:-

1. Mr. Thorat, learned counsel for petitioners submits that petitioners are promoted under order dated 16.04.2018 to the post of Junior Engineer. Their promotions are not challenged by any person. The only recourse to challenge the promotions of petitioners is by filing Appeal under Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. According to the learned counsel, the order directing enquiry to be conducted by an officer

below the rank of Chief Executive Officer is not permissible. The learned counsel submits that the exemption from passing examination can only be upon the application by the party and not without application. The learned counsel relies on the circular dated 02.02.2006 and 23.08.2010.

2. According to the learned counsel, the departmental promotion committee has considered the case of petitioners vis-a-vis the case of the other employees and have validly promoted present petitioners. No illegality can be found in the same. In the enquiry conducted by the committee petitioners have not been given any opportunity. The same is an ex-parte one.

3. According to the learned counsel for the Zilla Parishad, show cause notices were given to petitioners and they filed their say and the same was considered. It was noticed that there are seniors to petitioners who were not considered for promotion in proper manner. The Divisional Commissioner has also issued letter.

4. The learned A.G.P. submits that the Chief Executive Officer of the Zilla Parishad submitted report under is letter dated 28.11.2018 mentioning the irregularities carried out while giving promotions to the post of Junior Engineer. It was submitted in the report by Chief Executive Officer

that petitioners are promoted on the post of Junior Engineer by violating the seniority. The enquiry was conducted by the Chief Executive Officer through the committee consisting of Deputy C.E.O. and Additional C.E.O..

5. Mr. Sapkal, learned counsel for the intervenor submits that the intervenor had been granted exemption from passing qualifying and professional examination on completion of 45 years of age under various order commencing from the order dated 02.12.2010, 02.02.2013, 22.08.2013 and so on. The enquiry has been conducted and illegalities are observed in the process of granting promotion.

6. As on the date there are no orders of demotion passed against petitioners. Reliance is placed on the enquiry report.

7. The petitioners are occupying the posts of Junior Engineer. If the petitioners are demoted, the petitioners have remedy to challenge the demotion under Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964.

8. The enquiry it appears has been conducted by the committee constituted by the Chief Executive Officer.

9. The promotion to the post of Junior

Engineer has to be made from the feeder cadre of the Civil Engineer Assistant. Reliance can be had to Schedule 6 of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967. The promotion on the post of Junior Engineer is "by promotion from amongst suitable Assistant to Junior Engineers who have passed Professional Examination overseers prescribed by the State Government". Assistants to the Junior Engineers are now referred to as Junior Engineer Assistant as per the Government Resolution dated 20.05.1999.

10. It is further not the subject matter of debate that the persons on completing 45 years of the age can be considered for exemption from passing qualifying/professional examination.

11. It is for the authority to consider all these aspects of the matter and then take a decision. The enquiry has been conducted. Further decision pursuant to the enquiry is not yet taken. It is only after the decision is taken pursuant to the enquiry, the parties aggrieved would have a cause to agitate against the same. Today as no decision has been taken, we are not inclined to pass any order in the petition.

12. In case, some orders adverse are passed against the parties, the parties are entitled to avail the remedy as may be permissible in law.

13. All contentions of parties in that regard are kept open. No costs.

14. In view of disposal of writ petition, present civil application is disposed of.

(ANIL S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-19