

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3432 OF 2018

Dashrath G. Patil ... Petitioner.
V/s.

Chief Executive Officer
Zilla Parishad and anr. ... Respondents.

Mr. Sandesh Shukla a/w. Mr. Hafeez Patanwala I/b Mr.Santosh
Sawant for the Petitioner.

Mr. S.B. Shetye for Respondent Nos.1 and 2.

**CORAM : R. M. BORDE AND
PUSHPA V. GANEDIWALA, JJ.
DATE : 20th FEBRUARY 2019.**

ORAL JUDGMENT (PER R.M. BORDE, J.):

1] Heard.

2] Rule. With the consent of parties, the petition is taken up for
final disposal at the admission stage.

3] The petitioner is praying for issuance of writ or directions in
exercise of extraordinary jurisdiction under Article 226 of the
Constitution of India seeking quashment of Notice dated 2nd
August 2014 issued by respondent No.2. The petitioner, in view of

the impugned notice, had been directed to pay a sum of Rs.5,31,587/-, which amount is stated to have been paid to the petitioner by way of incremental benefits in violation of the relevant provisions of law viz. the Maharashtra Construction Rules which are claimed to be applicable in case of the petitioner. The recovery is directed on account of failure of the petitioner to pass the prescribed professional examination within the stipulated period from the date of appointment of the petitioner as a Junior Engineer.

4] The issue involved in the instant petition is no more *res integra* and is squarely covered by the decision of this court in Writ Petition No. 1481 of 2014 decided on 15th April 2014 at Aurangabad Bench to which one of us (R.M. Borde) is a Member. The State Government has also issued a Circular on 18th February 2016 clarifying the position that the Engineers possessing higher qualification, i.e., Degree or Diploma in Engineering shall not be required to pass a prescribed professional examination.

5] The petitioner holds a Diploma in Civil Engineering and was initially appointed as a Junior Engineer by the Zilla Parishad by way of nomination on 12th December 1984. He was promoted vide promotion letter dated 27th November 2003 with effect from 1st April 1990. Though, the petitioner had earlier approached the Industrial Court by presenting a complaint vide Complaint (ULP) No. 142 of 2014 alleging unfair labour practices against the Zilla Parishad, the complaint was not entertained by the Industrial Court holding that the petitioner would not fall under the definition of “*workman*” as provided under Section 2(s) of the Industrial Disputes Act, 1947.

6] The petitioner has placed reliance on the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 and more particularly Appendix – VI, Entry at Sr. No.2. There are two modes prescribed for appointment of Junior Engineers, i.e., one by promotion and another mode is by nomination. So far as the appointment by nomination is concerned, in view of Clause (b) (ii) if a candidate possess a recognized degree or Diploma (three years course) in Civil, Mechanical or Electrical Engineering, as the case

may be, or an equivalent examination, he shall be held eligible for appointment. It is not in dispute that the petitioner has been appointed as a Junior Engineer by nomination and the relevant entry in Appendix - C does not lay down a condition as regards passing of the professional examination.

7] The reliance placed on the Construction Manual by the Zilla Parishad is misplaced. Even other wise, in view of the judgment delivered by this Court in the matter of Writ Petition No. 1481 of 2014 decided on 15th April 2014 (***Dinesh Shivram Patil and anr. vs. The State of Maharashtra and ors.***), the State has issued a Circular on 18th February 2016 clarifying the position that the Engineers possessing higher qualification, i.e. Degree or Diploma in Engineering shall not be required to pass professional examination.

8] In view of Circular dated 18th February 2016 adopted by the State Government as well as in view of the decision referred to above, Writ Petition deserves to be allowed and the same is accordingly allowed. It is declared that the petitioner shall not

required to pass the professional examination referred to in the impugned notice and as a consequence, the impugned notice dated 2nd August 2014 issued by the Zilla Parishad stands quashed. The amount recovered in pursuance to the impugned notice shall be refunded to the petitioner, as expeditiously as possible and preferably within three month from today.

9] Rule is accordingly made absolute. There shall be no order as to costs.

(PUSHPA V. GANEDIWALA, J.)

(R. M. BORDE, J.)