

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

WRIT PETITION NO. 7883 OF 2022

1. Raju Devram Suryawanshi
Age: 54 years, Occu: Service
As Section Engineer
Maharashtra Jeewan Pradhikaran
Sub Division At Erandol, District, Jalgaon

2. Pradeen Sitaram Kulkarni
Age: 56 years, Occu: Service
As Sub Divisional Engineer With Zilla Parishad
Palghar on Deputation At ZP Water Supply
Sub Division At Palghar, District Palghar

... Petitioners

Versus

1. The State of Maharashtra
Through – The Secretary, Water Supply,
And Sanitation Department, Mantralaya,
Mumbai – 400032.

2. Maharashtra Jeevan Pradhikaran
Through – Member - Secretary, Express Tower,
4th Floor, Nariman Point, Mumbai – 400032.

3. Maharashtra Environmental Engineering,
Training, And Research Academy,
Through – Director (Administration),
In Front of Office of the Revenue Commissioner,
ISP Road, Nashik Road, Nashik – 422101

... Respondents

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WITH

WRIT PETITION NO. 4875 OF 2022

WITH

CIVIL APPLICATION NO.14487 OF 2022

1. Ramesh Sopanrao Shinde
Age: 57 years, Occu: Service,
As Deputy Engineer With Zilla Parishad,
Aurangabad on Deputation at Zilla Parishad
Water Supply, Sub Division at Sillod,
District – Aurangabad
R/o Kasliwal Marvel (West), Row House
No.87, Beed Bypass, Aurangabad

2. Balasaheb Ravan Shelar
Age: 52 years, Occu: Service
As Sub Divisional Engineer With Zilla Parishad
Latur on Deputation at ZP Water Supply
Sub Division at Nilanga, District – Latur
R/o Flat No.302, Saidham Society,
New Khadgao Road, Latur – 413512

3. Satish Ganapati Mane
Age: 57 years, Occu: Service,
As Deputy Engineer IT Cell
Maharashtra Jeevan Authority,
CBD, Belapur, New Mumbai – 410206
R/o Flat No.08, Sadarshan Park, Opp MIDC
Office, Vedant Nagar, Aurangabad – 431001

... Petitioners

Versus

1. The State of Maharashtra
Through – The Secretary, Water Supply,
And Sanitation Department, Mantralaya,
Mumbai – 400032.

2. Maharashtra Jeevan Pradhikaran
Through – Member - Secretary, Express Tower,
4th Floor, Nariman Point, Mumbai – 400032.

3. Maharashtra Environmental Engineering,
Training, And Research Academy,
Through – Director (Administration),
In Front of Office of the Revenue Commissioner,
ISP Road, Nashik Road, Nashik – 422101

... Respondents

**WITH
WRIT PETITION NO.12351 OF 2022**

1. Ranjak Babasaheb Vishwe
Age: 42 years, Occu: Service,
As Junior Engineer
Maharashtra Jeevan Pradhikaran
Superintending Engineer's Office
Ahmednagar Circle Officer, Ahmednagar
R/At Raskar Nagar, Siddhivinayak Park,
C – 101, Ward No.07 ShriRamPure
District Ahmednagar
2. Suryakant Ganpatrao Chonage
Age: 52 years, Occu: Service
As Sectional Engineer With
Akola Sub Division, Maharashtra Jeevan Pradhikaran,
District – Ahmednagar

... Petitioners

Versus

1. The State of Maharashtra
Through – The Secretary, Water Supply,
And Sanitation Department, Mantralaya,
Mumbai – 400032.
2. Maharashtra Jeevan Pradhikaran
Through – Member - Secretary, Express Tower,
4th Floor, Nariman Point, Mumbai – 400032.
3. Maharashtra Environmental Engineering,
Training, And Research Academy,
Through – Director (Administration),
In Front of Office of the Revenue Commissioner,
ISP Road, Nashik Road, Nashik – 422101

... Respondents

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Mr. Anand Chawre, Advocate for the petitioner/s
Mr. P. S. Patil, AGP for Respondent No.1/State in all petitions
Mr. Vinod P. Patil, Advocate for Respondent Nos.2 & 3 in all petitions

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**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 12th December, 2022

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Writ petition no.4875/2022 was not on board. By the consent of the parties, this petition is taken on board.
2. **RULE.** Rule made returnable forthwith and heard finally by the consent of the parties.
3. All these petitioners are identical placed. All of them are working as per the details mentioned below:-

	Writ Petition No.4875 of 2022			Writ Petition No.7883 of 2022		Writ Petition No.12351 of 2022	
	Petitioner No.1	Petitioner No.2	Petitioner No.3	Petitioner No.1	Petitioner No.2	Petitioner No.1	Petitioner No.2
Date of Birth & Age	01.07.1965 57	06.02.1970 52	20.10.1965 57	25.03.1968 54	26.07.1966 56	10.09.1980 42	22.06.1970 52
Joining Date	12.01.1990	11.11.1998	08.01.1990	22.10.1997	11.11.1998	27.10.2004	07.11.2003
Joined As	Assistant Engineer Grade 2	Junior Engineer / Assistant Engineer Grade 2 vide order dated 26.11.2001 with effect from 11.11.1998	Assistant Engineer Grade 2	Junior Engineer	Junior Engineer / Assistant Engineer Grade 2 vide order dated 26.11.2001 with effect from 11.11.1998	Junior Engineer	Junior Engineer
Promoted As Deputy Engi.	17.07.2004	20.06.2006	18.10.1999	NA	23.06.2006	NA	NA
Professio	2008	2008	2004	2003	2008	2008	2008

nal Exam Passed							
Current Position	Deputy Engineer with Z P Aurangabad on deputation	Sub Divisional Engineer with Z P Latur on deputation	Deputy Engineer I T Cell	Section Engineer MJP Sub Division At Erandol, District Jalgaon	Sub Divisional Engineer with ZP Palghar on Deputation	Section Engineer MJP Sub Division At Akole, District Ahmednagar	Junior Engineer MJP Ahmednagar Circle Office, Ahmednagar
Date of Retirement	30.06.2023	28.02.2028	31.10.2023	31.03.2026	31.07.2024	30.10.2038	30.06.2028

4. It is undisputed that each of these petitioners had earlier appeared for the Departmental Professional Examination (DPE). This exam is to be passed by every candidate after joining and even after promotion. The issue before us is that, these petitioners have been failed in the DPE conducted as per the dates set out in 2003 and 2008. Since each of them had failed in the exams, they applied for revaluation/re-verification. In some cases, the applications for revaluation were invited by the committee itself, which was specifically set up for the said purpose. It is undisputed that each of them has been declared to have passed the DPE after re-verification, around 14 to 16 years ago. The cause for these petitioners to approach this Court are the impugned notices, issued for calling upon them as to why their performance as displayed in the re-verification results should not be cancelled, as to why the benefits given to them on the strength of passing the DPE should not be withdrawn and as to why the monetary benefits already extended should not be recovered.

5. The issues raised by the petitioners before us are no longer *res integra*, in the light of the order dated 27.09.2022, passed by this Court [Coram: Dipankar Datta, CJ (as His Lordship then was) & Madhav J. Jamdar, J.], in Writ Petition No.9612/2022 filed by Ramesh Mahadeo Mathkar Vs. State of Maharashtra through the Secretary & Others. This view was followed by this Court at the Nagpur Bench, vide judgment dated 25.11.2022, in Writ Petition No.2202/2021 filed by Santosh Shriram Gawhankar & Ors. Vs. State of Maharashtra through Secretary & Ors. and connected matters.

6. The learned Advocate representing respondent nos.2 & 3, in these petitions, has strenuously opposed these petitions. He, however submits that he is aware that the law laid down by this Court in Ramesh Mahadeo Mathkar (Supra), holds the field.

7. We do find an observation in Paragraph Nos.16, in Ramesh Mahadeo Mathkar (Supra), wherein, this Court held that the judgment and order shall not be treated as a precedent for the other cases.

8. Nevertheless, we deem it appropriate to reproduce Paragraph Nos.15 to 17, in Santosh Shriram Gawhankar (Supra) here under :-

“15. At this stage it would be necessary to refer to the observations of the Constitution Bench of the Honourable Supreme Court in Malcom Lawrence Cecil D’Souza v. Union of India and ors. AIR 1975 SC 1269.

In paragraph 9 thereof it has been observed as under :

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one’s position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Baking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

16. Though the observations aforesaid have been made in the context of challenge to the seniority of a co-employee, the aspect of smoothness and efficiency of service has also been highlighted. Possibility of administrative complications and difficulties have been referred to. In K. R. Mudgal and ors. vs. R. P. Singh and ors. AIR 1986 SC 2086 the Honourable Supreme Court observed that satisfactory service conditions postulate that there should be no sense of uncertainty amongst government servants on account of litigation initiated after several years. As noted above, in the present case, pursuant to re-verification of the answer papers in the year 2004 for a period of almost eight years nothing happened thereafter. Some objections were raised in the year 2012 to the procedure of re-verification and the matter was considered by the MJP in its Board meeting on 16/07/2013. Though it was resolved unanimously to give a quietus to the said issue, the Water Supply and Sanitation Department was of a different view. Thus, in effect, the action of re-verification that took place in the year 2003-2004 and 2008-2009 is sought to be reopened on 09/12/2021.

In the totality of the circumstances and on considering the entire material on record, we find that re-opening of the said matter after lapse of nine to fourteen years would be unreasonable and is likely to result in unnecessary hardship to the petitioners. In Ramesh Mahadeo Mathkar (supra) a co-ordinate Bench of this Court has considered a somewhat similar challenge to the order dated 09/12/2021 that is impugned in these writ petitions. After noting the fact that the petitioner therein was to shortly retire on superannuation, this Court set aside the order dated 30/03/2022 that required the said

petitioner to appear in the DPE. One of the factors that weighed with the Court was the time factor of re-opening the proceedings in the backdrop of the aspect that the petitioner could have availed the opportunity of appearing in the DPE shortly after being informed in the year 2004-2005 that re-verification of the answer papers was not permissible. It is true that the Division Bench has observed that the said judgment and order was not to be treated as precedent for other cases. We however find that it would be a relevant aspect in the present case. The petitioners could have also appeared in the DPE in 2005 and onwards if it would have been pointed out to them shortly after the exercise of re-verification was undertaken that the same was not permissible under the Maharashtra Public Works Department Manual. After a lapse of nine to fourteen years when each petitioner has crossed the age of 45 years and some of the petitioners have been further promoted, requiring them to appear in the DPE and clear the same in three attempts appears to be harsh. It is not the case of the MJP that the services rendered by the petitioners are unsatisfactory in any manner especially for the reason that their answer papers were re-verified and on that basis they were treated to have been declared as passed. At the cost of repetition it may be reiterated that MJP where all the petitioners are engaged has no grievance whatsoever with the services rendered by the petitioners and it still seeks to justify its decision to permit re-verification of the answer papers.

17. Hence for aforesaid reasons we are of the considered opinion that the petitioners cannot be required to appear in the DPE that has been directed to be conducted in the light of the impugned communication dated 09/12/2021. It is declared that the said communication requiring the petitioners in both the writ petitions to appear in the DPE would not be applicable to them. Their candidature for further promotion can be considered by the Departmental Promotion Committee in accordance with the applicable Rules. The direction for fixing the responsibility of the aforesaid lapse and initiation of disciplinary action thereafter by the MJP is not interfered with.

Rule in both the Writ Petitions is made absolute in aforesaid terms with no order as to costs.

All Civil Applications are also disposed of.”

9. We do not find that the petitioners before us stand on a different footing in comparison to Santosh Shriram Gawhankar and others. In the cases before us, all these petitioners have been declared

to have passed the DPE after the committee carried out a re-verification of their results. After about 14 to 16 years, the respondents/authorities desire to dig-out skeletons on the pretext that re-verification was never provided under the rules. This conduct of the department cannot be countenanced for the reason that, the department itself forms a committee and conducts re-verification of the performances of candidates, who appeared in the DPE 14 to 16 years ago. After finding that their assessment was not made properly and after declaring them to have passed the DPE in the re-verification exercise, issuance of the impugned notices calling upon them to re-appear for the DPE after a decade and a half, is an act which cannot stand the test of reason, logic and fairness. If the department was aware that there is no provision for re-verification, they should not have resorted to re-verification in the first place. Moreover, after about 14 to 16 years of such re-verification, calling upon the candidates to re-appear for the DPE would be atrocious.

10. In view of the above, all these petitions are partly allowed. The impugned order dated 09.12.2021 stands quashed and set aside. Pending civil application does not survive and stands disposed off.

11. We make it clear that it is open to the department to proceed to fix the responsibility of the aforesaid lapse of forming a committee for

carrying out re-verification. We clarify that we have not interfered in the said direction issued by the department.

12. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

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