

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

WRIT PETITION NO. 1683 OF 2021

The State of Maharashtra
Thr. PWD & Others ...Petitioners
Vs.
Asman Dhondiram Garje & Ors. ...Respondents

**WITH
WRIT PETITION NO.1684 OF 2021**

The State of Maharashtra
Thr. PWD & Ors. ...Petitioners
Vs.
Mohammad Abdul Hai Mohammad
Abdul Gani & Ors. ...Respondents

Mr.P.V. Mandlik, Senior Counsel i/b Mr.M.A. Deshpande, AGP
for the Petitioner.
Mr.Arvind S. Deshmukh for the Respondents in WP No.1683 of
2021.
Mr.Avinash Deshmukh for the Respondents in WP No.1684 of
2021.

CORAM : C.V. BHADANG AND

SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 05 JULY 2022

PRONOUNCED ON : 12 SEPTEMBER 2022

JUDGMENT : (Per C. V. Bhadang, J.)

(Signed judgment is pronounced by Sandipkumar C. More, J. as
per clause (i) of Rule 1 of Chapter-XI of Bombay High Court

Appellate Side Rules, 1960 as C.V. Bhadang, J. is sitting at Mumbai).

. Both these Petitions, arise out of common order dated 18 December 2019 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad ('Tribunal' for short) in Original Application No.704 of 2017 and 749 of 2017.

2. By order dated 14 March 2022, these Petitions were directed to be decided finally at the stage of admission. As such they are being decided by this common judgment.

3. The Private Respondents, had approached the Tribunal seeking deemed date of promotion to the post of Junior Engineer/ Overseer, from the date of passing of the professional examination. The Respondents were appointed to various posts such as Sub Overseer, Road Karkoon, Surveyor, during the period from 1979 to 1984 which were then part of the technical posts. All these posts, in the subordinate Engineering services, were amalgamated in the year 1989 and the cadre of Civil Engineering Assistants ('CEA') was created, which was the feeder cadre for the promotional post of Junior Engineer/Overseer.

4. The Respondents (Original Applicants) had passed the professional examination during the period from 1981-1990. They have been promoted to the post of Overseer/Junior

Engineer during the period from 1995 to 2000. Thus the only issue was whether they were entitled to a deemed date of promotion from the date of the passing of the professional examination which claim of the Respondents, the Tribunal has accepted.

5. We have heard Mr.Mandalik Special Government Counsel for the Petitioners and Mr.Deshmukh, for the Respondents. With the assistance of the learned counsel for the parties, we have gone through the record.

6. Parties have produced a short synopsis of their submissions with the list of reliance. We have gone through the same.

7. It is submitted on behalf of the Petitioner that Original Application before the Tribunal was not filed within limitation, inasmuch as the Respondents are claiming deemed date of promotion with effect from the date of passing of their examination during the period from 1981 to 1990. They have approached the Tribunal in the year 2017. It is thus, submitted that the Applicants were liable to be rejected on the ground of limitation alone as prescribed period of limitation is of one year.

8. It is submitted that the impugned order passed by the Tribunal is based on misreading/misinterpretation of

Government Resolution (“GR”) dated 16 September 1964 and 16 December 1998. It is submitted that GR of 1964 only prescribes the passing of the professional examination as an eligibility criteria for consideration for promotion to the post of Overseer/Junior Engineer. It is submitted that such promotion is based on several other factors, including the incumbent having put in 5 years service in the CEA/feeder cadre, consideration of the Annual Confidential Reports (ACRs) and the availability of post in the promotional cadre, apart from passing of the professional examination. It is thus submitted that the deemed date could not have been granted from the date of passing of the examination.

9. It is pointed out that there were only 10% posts in the cadre of Junior Engineer/Overseer which could be filled from the CEA cadre. It is submitted that on account of non-availability of diploma and graduate engineers it was increased to 25% from 1965 to 7 September 1998. On 7 September 1998 it was reduced to 10%. In the year 2006 the same has been restored to 25%.

10. It is submitted that reliance placed on the orders passed by the Superintending Engineer, PWD, Nagpur and certain employees from the Irrigation Department in the year 2002 is misplaced. It is pointed out that the order passed by the

Superintending Engineer, PWD, Nagpur, was as a special case and parity may not apply.

11. It is submitted that the reliance placed on the judgment of this Court at the principle Seat in WP No.9266 and 2017 is also misplaced as the facts are distinguishable and the said judgment was rendered on the point of discrimination.

12. It is submitted that even otherwise the earlier decision by the Government, granting such deemed date, cannot be taken benefit of by the Respondents as there is no “negative equality”, contemplated under Article 14 of the Constitution of India, for which purpose reliance is placed on the decision of the Supreme Court in *State of Haryana V/s. Ram Kumar Mann¹ and Gursharan Singh: Ashwani Sachdeva V/s. New Delhi Municipal Committee²*.

13. Further reliance is placed on the decision in Letters Patent Appeal No.225 of 2013 *Vijay s/o Bhiwaji Bhagat V/s. Joint Executive Officer, Zilla Parishad, Nagpur* decided on 23 December 2021 (Nagpur Bench) and WP No.2717 of 2008 decided on 29 January 2010, the *State of Maharashtra V/s. Manohar Gopalji Shah and Others³*.

1 (1997) 3 SCC 321

2 1996 DGLS (SC) 245

3 2010 (3) BCR 656

14. The learned counsel for the Respondents has submitted that the Tribunal after correctly appreciating the provisions of the 1964 Resolution has granted the benefit, particular in view of the fact that, many of the similarly situated employees, have been granted such benefit which orders have attained finality. The learned counsel has pointed out the orders passed in OA No.233 of 2012, 234 of 2012, 235 of 2012 and 236 of 2012 directing the giving of deemed date of promotion from the date of passing of the professional examination which orders have been upheld by this Court in WP No.10623 to 10625 of 2014 and WP No.9266 of 2017 on 17 July 2018. Reference is also made to other similar decisions including decision by the Industrial Court which order has also been upheld.

15. It is pointed out that the relevant GR dated 7 June 1965 provides that the professional examination shall be held during October to December, every year, of which the results would be declared in January of the next year and the successful employees being absorbed in the cadre of Overseer by 1st of February of the year of passing. He therefore, submitted that the impugned order is legal and proper and does not require interference.

16. We have considered the rival circumstances and the submissions made and we do not find that any case for interference is made out.

17. It is undisputed that the Respondents were appointed to the various posts as Sub Overseer/ Surveyor etc., between 1979 to 1984 and they have passed the professional examination. All these posts in Class-III (Technical Posts) were amalgamated into cadre of Civil Engineering Assistants by GR dated 31 January 1989 and the recruitment rules for the posts in Civil Engineer Assistants were notified. It is also not disputed that the Respondents have been promoted to the post of Junior Engineer during the period from 1995-2000. The only question is whether they are entitled to claim deemed date of promotion from date of passing of the professional examination.

18. At the outset the contention based on limitation does not commend to us. This is for the reason that the Respondents had earlier approached the Tribunal in OA No.745 of 2013 and 147 of 2014 in which a direction was given to submit necessary proposal which was required to be considered by the Government. It is after this that by an order dated 13 January 2017 the first Respondent had refused to extend the benefit of deemed date after which the Respondents had approached the

Tribunal. Thus, the ground based on limitation cannot be accepted.

19. This takes us to the merits of the matter. The challenge on behalf of the Petitioner is mainly based on the contention that the passing of the professional examination was a qualification for promotion and deemed date cannot be granted from the date of passing of the examination.

20. We find that the said issue has arisen in several other matters as referred to by the Tribunal in paragraph 18 of the impugned judgment. In particular reference can be made to Writ Petition No.10623/2014 to 10625/2014 and Writ Petition No.9266 of 2017, which were decided on 17 July 2018 (Principal Seat) had upheld similar direction issued by the tribunal for granting deemed date from the date of passing of the professional examination. The said decision had attained finality, as the same has not been carried any further.

21. It appears that some of the similarly situated employees had approached the Industrial Court and the Industrial Court had directed giving of deemed date from the date of passing of the professional examination which order has also been upheld by this Court.

22. It is also not in dispute that the employees of the Irrigation Department were granted similar benefit and even the employees of the PWD at Nagpur have been extended similar benefit by the Government. Now it is contented that it was as a special case and no parity arises on the ground that there is no negative equality. However, we find that the ground of discrimination was considered by this Court by a judgment and order dated 17 July 2018 in a batch of Writ Petitions being Writ Petition No.9266 of 2017 and others has refused to interfere with the order passed by the Tribunal on 7 October 2013 in OA No.233, 234, 235 and 236 of 2012. This is what is held in paragraph 11 of the judgment.

“11. We are unable to appreciate the distinction between Shri.D.N. Thorat and 17 others referred to in the G.R. dated 25.09.2002, which have been admittedly granted benefit of deemed date of promotions and the respondents in the present matters. Even if we were to assume that Shri.D.N. Thorat and 17 others were qualified on the date of their entry in Government service that by itself, is not some distinguishing feature. This is because in terms of the GR’s relied upon by the petitioners themselves the deemed dates are required to be granted only from the date Sub-Overseers passed the professional examination as prescribed. Admittedly,

the respondents have passed this professional examination as prescribed on various dates between 1986 and 1992. Admittedly, the respondents, claimed for deemed dates commensurate to the date of their passing of professional examination as prescribed and not from any earlier dates, depending upon the date of their entry into Government Service.”

23. In the circumstances and in view of the decision of the co-ordinate Benches we are not inclined to take a different view of the matter.

24. In *Ramk Kumar Mann*, the Respondent, was working as a Smallpox Supervisor, in the Health Department. He had tendered his resignation in the year 1982, to contest the election as a members of the State Legislative Assembly. His resignation was accepted on 18 May 1982. He contested the election but was defeated. Thereafter he filed an application for withdrawing his resignation which was disallowed. That was the order which was challenged before the High Court. The High Court after observing that three similarly situated employees were allowed to withdraw their resignations and were allowed to resume their respective posts, held that failure to extend similar benefit to the Respondent, was violative of Article 14 of the Constitution of

India. The matter thereafter reached the Hon'ble Supreme Court. The Hon'ble Supreme Court held that there was no discrimination and the fact that the other three employees were allowed to withdraw their resignations cannot come to the aid of the Respondent therein.

25. The case of the *Gurusharan Singh* involved a claim for allotment of a shop to a stall holder on a certain land which was required for widening of the road.

26. The case of *Vijay s/o Bhiwaji Bhagat* before the Division Bench of this Court at Nagpur, involved a claim for promotion on the ground that the Appellant claimed that he was the only eligible person entitled to be promoted from the SC category and despite availability of such post he was not promoted.

27. Lastly, in *Manohar Gopalji Shah* the Tribunal had directed fixation of pay of the Respondents on par with their juniors on the date of their promotion as Executive Engineers.

28. In our considered view all these cases clearly turned on their own facts.

29. In the result, the writ petitions are without any merit and are accordingly dismissed, with no order as to costs.

30. At this juncture, learned A.G.P. Shri S.B. Yawalkar submits that vide order dated 02.03.2021, the learned Counsel for the respondents had made a statement that the respondents would not press contempt petition till next date. The learned A.G.P. submitted that the said statement be continued for the further period of six weeks or the operation of this order be stayed further for some period. However, it was only a statement at the relevant time and the learned Counsel for the respondents is not ready to make further statement to that effect. In view of the same, the request made by learned A.G.P. is hereby rejected.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.