

IN THE HIGH COURT OF JUDICATURE OF BOMBAY**BENCH AT AURANGABAD****914 WRIT PETITION NO.7554 OF 2018****SANJAY RAGHUVVEER PARIHAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr.Deshmukh Yashodeep P. i/by Mr.Kawre
Anand D.

AGP for Respondent Nos. 1 to 4-State : Mrs.M.A.Deshpande

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 20.08.2022.

PER COURT : (PER - SANDEEP V. MARNE, J.)

1. By way of the present petition, petitioners challenge judgment and order dated 06.05.2016 passed by the Maharashtra Administrative Tribunal, Aurangabad (for short 'the Tribunal') in Original Application No. 68 of 2012.

2. The case of petitioners before the Tribunal was that they held qualification of S.S.C. and one year certificate course of Civil Engineering Assistant (for short "C.E.A."). Their grievance is that there was a scheme formulated vide Government Resolution dated 07.08.1982 issued by the Public Works Department for the provisional appointment of candidates who completed the course of C.E.A. on the post of 'Muster Karkun' in

that department. It was petitioners' case before the Tribunal that even though they possessed required qualification specified in the Government Resolution dated 07.08.1982, the respondents failed to absorb them as a Muster Karkrun/ Civil Engineering Assistant. They further submit that action of the respondents was discriminatory in that the similarly situated individuals were absorbed in service as Civil Engineering Assistants.

3. The Tribunal has rejected the Original Application of the petitioners holding that the Government Resolution dated 07.08.1982 was only an interim arrangement and that the same did not even apply to the Water Resources Department. The Tribunal further held that the cadre of Civil Engineering Assistant was created by the Government Resolution dated 31.01.1989 and the Recruitment Rules under Article 309 of the Constitution of India were notified on 26.02.2002 by the Water Resource Department. The Tribunal has held that after notification of the recruitment rules, recruitment to the post of C.E.A. has to be made under the statutory rules and not as per the Government Resolution dated 07.08.1982 since the same was merely an interim measure.

4. Appearing before us on behalf of the petitioner, Mr. Deshmukh submits that the scheme for absorption of candidates holding qualification of S.S.C. and one year certificate course of CEA was in vogue in the year 1987 when the petitioners sought their absorption in the Government Service. He invited our attention to the letter dated

11.10.1989 and submits that an assurance was given to one of the candidates that the government would continue the scheme of absorption of candidates possessing CEA certificates. He submits that the State Government is bound by principle of promissory estoppel. He further submits that even after notification of statutory recruitment rules, the administrative instructions in the form of the Government Resolution dated 07.08.1982 would continue to survive as Rules do not have effect superseding Government Resolution dated 07.08.1982.

5. Mrs. Deshpande, learned AGP appearing for the State Government supports the order of the Tribunal. She raises the issue of delay in approaching the Tribunal.

6. After hearing the learned counsels for the respective parties, we find that the Tribunal has not committed any jurisdictional error while dismissing the Original Application filed by the petitioners, for invoking our extraordinary jurisdiction under Article 226 or 227 of the Constitution of India.

7. The petitioners have premised their claim for absorption on the basis of Government Resolution dated 07.08.1982. They claimed before the Tribunal that they ought to have been absorbed in the service in the year 1987. However, they filed the Original Application before the Tribunal only in the year 2012. The Tribunal could have dismissed the Original Application on the ground of delay alone. Nonetheless, the

Tribunal went on to decide the merits of the matter and has rightly come to the conclusion that after the notification of recruitment Rules on 25.02.2002, those rules would continue to hold the field and the appointments to the post of CEA cannot be made under the provisions of Government Resolution dated 07.08.1982.

8. The submission of Mr. Deshmukh that the Government is bound by the principle of promissory estoppel does not appeal to us. There cannot be an estoppel against law. Mere formulation of scheme for temporary absorption in 1982 would not estopp the Government from framing the Recruitment Rules and to fill up the posts in accordance thereof. Rather it is the duty of the Government to notify the Recruitment Rules and to fill up the posts strictly in accordance thereof.

9. Assuming for the sake of argument that there was a scheme for absorption of candidates holding qualification of certificate course of CEA, once the recruitment rules are formulated and notified in the year 2002, the applicability of Government Resolution 08.07.1982 ends and the Rules would have supremacy over the administrative instructions. We are startled at the submission of Mr. Deshmukh that even after the notification of recruitment Rules, administrative instructions would continue to operate. We summarily reject the submission as the administrative instructions must yield to the recruitment rules. Even otherwise the insistence of the Petitioners that they should be absorbed

in service by giving a go bye to selection process cannot be countenanced.

10. We therefore do not find any merit in the petition and the same is dismissed with no order as to costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

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