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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9612 OF 2022

Ramesh Mahadeo Mathkar

...Petitioner

V/s.

State of Maharashtra through
the Secretary, Water Supply &
Sanitation Department & Ors.

...Respondents

Mr. Atul Damle, Senior Advocate i/by Mr. Ashok S.
Pandire for the petitioner.

Ms. R. A. Salunkhe, AGP for respondent no.1/State.

Mr. Ajit Ram Pitale for respondent no.2.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 27, 2022

P.C.:

1. The petitioner joined the Maharashtra Jeevan Pradhikaran (respondent no. 2) as Assistant Engineer (Grade-II) on 16th September 1986. He was promoted to the post of Sub Divisional Engineer on 20th March 2003. As a condition of service, he was required to appear and succeed in the Departmental Professional Examination (hereafter "DPE", for short) within three (3) years of such promotion to become entitled for further increments. It is not in dispute that the petitioner failed to succeed in the DPEs conducted in 2003 and 2004; however, the respondent no.2 on 14th December 2004 constituted a committee for reverification/revaluation of the papers of the unsuccessful candidates who had written the

DPE conducted in 2004. Upon such reverification/revaluation, three (3) marks were added to the marks obtained by the petitioner by way of grace on the subject of Accounts, with the result that he was shown to have succeeded in the DPE.

2. Pausing here, we may take note that the petitioner was required to appear in three (3) subjects pertaining to the DPE conducted in 2004, i.e., General Engineering, Water Supply & Sanitation, and Accounts. He had succeeded in the subjects of General Engineering and Water Supply & Sanitation but fell short of the qualifying marks in Accounts by three (3) marks. The reverification/revaluation that was conducted resulted in awarding of three (3) grace marks to the petitioner with the consequence that he was declared to have passed the DPE conducted in 2004 on 30th September 2005. After such declaration of result, the petitioner was allowed to continue as Sub Divisional Engineer and paid salary as well as other allowances as per his entitlement.

3. On 30th August 2016, a show-cause notice came to be issued to the petitioner by the Chief Administrative Officer of the respondent no.2 calling upon the petitioner to explain why the benefits of promotion should not be taken away. The petitioner replied to the show-cause notice by a representation dated 7th October 2016. It was contended therein that reverification/revaluation of the results were conducted by the respondent no.2 without the petitioner having any role to play in that behalf. It was further contended that had the petitioner not been declared successful in the DPE conducted in 2004, he would have taken the opportunity of writing the next DPE. The point of delay

was also raised and it was contended that a decade had passed since the petitioner was declared successful in the DPE. It was, accordingly, prayed that no action ought to be taken pursuant to the show-cause notice because of lapse of time since the irregularity was committed.

4. For about five (5) years, there was complete silence maintained by the respondent no.2.

5. On 9th December 2021, the Deputy Secretary, Government of Maharashtra, Department of Water Supply & Sanitation addressed a letter to the Member Secretary of the respondent no.2. It was alleged therein that in course of reverification/revaluation of the results of the DPE conducted in 2004, grace marks had been arbitrarily awarded in excess of the limit set by the Government. The limit, that is referred to in the said letter, is that two (2) marks can be increased in any one subject and the total increase of marks should not be more than six (6), meaning thereby that in each subject there could be an increase of not more than two (2) marks. Pertinently, the petitioner was awarded three (3) marks by way of grace which, though in excess of the limit set for each subject, was well within the aggregate limit of grace marks.

6. Be that as it may, the Administrative & Establishment Officer of the respondent no.2 with the approval of the Member Secretary of the respondent no.2 issued a further order dated 30th March 2022 calling upon the petitioner to avail the opportunity of writing a further DPE which would be conducted firstly in March, secondly in June and thirdly in December 2022. It was threatened that if the petitioner failed

to succeed in such DPE, appropriate action would be initiated against him.

7. It is this order dated 30th March 2022 that has formed the subject matter of challenge in this writ petition by the petitioner.

8. Mr. Damle, learned senior advocate appearing for the petitioner, submits that the opportunities sought to be extended for writing the DPEs in March and June 2022 have not fructified since they were not conducted and the first examination is due to be conducted in October 2022. However, it is Mr. Damle's further contention that the petitioner is due to retire on superannuation on 30th November 2022. According to him, the insistence of the Government as well as the respondent no. 2 that the petitioner must write the DPE to be conducted in October 2022 failing which he would face adverse action, would operate harshly against the petitioner. That apart, serious prejudice would be caused to the petitioner since he would not be in service beyond November 2022 and, therefore, stand deprived of writing the DPE, if conducted in December 2022. Even otherwise, Mr. Damle contends that the petitioner having served the respondent no.2 as a Sub Divisional Engineer without any blemish since 2005, it would be iniquitous if he was made to suffer the consequences of any wrong action taken by the officers of the respondent no.2 without the authority of law as far back as in 2005.

9. We had heard this writ petition on 20th September 2022 and recorded our *prima facie* satisfaction of the

impugned order dated 30th March 2022 being too harsh. We had also called upon Ms. Salunkhe, learned AGP for the respondent no.1 to obtain appropriate instructions. Ms. Salunkhe, upon obtaining instructions, submits today that several other writ petitions are pending before the Aurangabad and Nagpur Benches of this Court at the instance of appointees who were given grace marks much in excess of the limit set by the Government. According to her, any decision in favour of the petitioner would be cited as a precedent before the other Benches and, therefore, no relief as claimed ought to be granted in favour of the petitioner, particularly in view of the fact that he obtained three (3) marks by way of grace in the subject of Accounts although the limit was two (2).

10. Mr. Pitale, learned advocate for the respondent no.2 has invited our attention to the resolution of the respondent no.2 dated 16th July 2022 addressed to the Additional Secretary, Water Supply & Sanitation Department, Government of Maharashtra. The Government was sought to be apprised that any adverse action against the beneficiaries of the reverification/revaluation of results would bring about undesirable results, particularly having regard to the distance of time when grace marks in excess of the limit were awarded as well as the meritorious service having been rendered by such appointees.

11. We have heard learned advocates for the parties and perused the materials on record.

12. There are certain significant features that stand out in the present case. The first is that the petitioner was entitled, as per Government rules, to two (2) marks by way of grace; instead, he was given three (3) marks by way of grace. The difference is minimal. In any event, the total grace marks awarded do not exceed six (6) which is the maximum that could have been awarded to a failed candidate. The petitioner having qualified in two (2) subjects, award of one (1) additional mark should not have been frowned upon. Secondly, the petitioner is due to retire on superannuation on 30th November 2022. The decision to grant three (3) opportunities cannot be fully availed of by the petitioner. He would, therefore, face discrimination. Thirdly, the distance of time is a factor which would weigh in favour of the petitioner. As rightly submitted by Mr. Damle, the petitioner could have availed the opportunity of writing the DPE in 2005. It was because of the reverification/revaluation of results that such opportunity could not be availed of. In any event, reverification/revaluation at the instance of the respondent no.2 was not at the behest of the petitioner. The petitioner not being instrumental in any manner in having his marks increased by award of grace marks cannot be made to suffer for no fault on his part. Indeed, if the petitioner had not been declared successful, he could have written the next DPE conducted in 2005.

13. It is based on these significant and distinctive features that we are of the considered opinion that the matter must be given a quietus.

14. The impugned order dated 30th March 2022 stands set aside. The petitioner shall be regarded as duly appointed on the post of Sub Divisional Engineer and entitled to all benefits that would have accrued to him but for the incidents giving rise to this writ petition. The petitioner shall be allowed to retire on 30th November 2022 unless, of course, there are valid reasons for the respondent no.2 to disallow such retirement. In case the petitioner is allowed to retire, he shall be entitled to retiral benefits in accordance with law.

15. The writ petition is disposed of on the above terms. No costs.

16. This judgment and order shall not be treated as precedent for the other cases.

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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)