

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1934 OF 2008

1. Raju s/o Wasudeo Hiwale,
Resident of 903-B, Laxmi Apartments,
Khare Town, Dharampeth, Nagpur.
2. Chandrasekhar s/o Bapurao Khasbage,
Resident of 11, Dhanwantari, Umred Road,
Nagpur.
3. Rajiv s/o Yashwantrao Choudhary,
Resident of Murlidhar Apartments,
Badkas Chowk, Nagpur.
4. Sanjay s/o Purushottam Kulkarni,
Resident of Vinayak Nagar, Amravati.
5. Vinod s/o Vitthalrao Manikpure,
Resident of Govind Nagar,
MIDC Bye-pass Road, Amravati.
6. Padmakar s/o Martandrao Deshmukh,
Resident of Chaitanya Colony,
Gorakshan Road, Akola.
7. Ajay s/o Onkarrao Malokar,
Birla Colony, Akola.
8. Ramdas s/o Ashruji Mundhe,
Maharashtra Jeevan Pradhikaran, Washim.

9. Prashant s/o Janardan Mool,
Resident of 201, Jal Tarang Complex,
Near J.M. High School, Kanartoli, Gondia.

10. Pradip s/o Bhimrao Wankhade,
Resident of Nagpur.

11. G.G. Sonwane, Resident of Gondia.

12. S.B. Hedau, Resident of Nagpur.

13. Sunil K. Borikar, Resident of Wardha.

Amendment
carried out as per
Court's order
dated 4 June
2019.

PETITIONERS

- Versus -

1. State of Maharashtra,
through its Secretary, Water Supply,
Sanitation and Sewerage Department,
Mantralaya, Mumbai – 32.

2. Maharashtra Jeevan Pradhikaran,
through its Member Secretary,
4th floor, Express Towers, Nariman Point,
Mumbai.

RESPONDENTS

Mr. K.S. Chiwarkar, Advocate holding for Mr. Anand Parchure,
Advocate for the Petitioners.

Mr. N.S. Rao, A.G.P. for Respondent No.1/ State.

Mr. D.M. Kakani, Advocate for Respondent No.2.

CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.

DATE : 10 MARCH 2022

ORAL JUDGMENT (PER NITIN JAMDAR, J.) :

By this petition, the Petitioners are challenging the order dated 28 April 2008 passed by the Maharashtra Jeevan Pradhikaran pursuant to the impugned Government Resolution dated 11 April 2008.

2. The Petitioners were working with Respondent No.1 – Water Supply, Sanitation and Sewerage Department (Maharashtra Jeevan Pradhikaran) as Junior Engineers. Respondent No.2 – Maharashtra Jeevan Pradhikaran is constituted under the Maharashtra Jeevan Authority Act, 1976 (hereinafter “Act of 1976”).

3. The Petitioners, at the time of entry in service, possessed a Diploma in Civil/ Mechanical/ Electrical Engineering. A benefit of corrected seniority, termed as 3/8 scheme, was introduced by the Government. Pradhikaran had issued a Government Resolution on 26 June 2007, wherein an incentive was given to the Junior Engineers working with the Pradhikaran, who had acquired degree qualification after 16 June 1997 in terms of promotion to the post of ‘Assistant Engineer (Grade-II)’. The benefit of the 3/8 scheme was accordingly extended to Respondent No.2 – Pradhikaran. After that, by the impugned

Resolution dated 11 April 2008, the Resolution dated 26 June 2007 was cancelled with retrospective effect and the benefit of 3/8 scheme for promotion to the post of 'Assistant Engineer (Grade-II)' was retrospectively sought to be withdrawn.

3. The Petitioners filed this petition on 28 April 2008. During the pendency of the petition, based on the Government Resolution dated 11 April 2008, Respondent No.2 – Pradhikaran passed an order on 28 April 2008 withdrawing the benefits conferred on the Petitioners with effect from 26 June 2007. By amending the petition, the Petitioners have challenged the Resolution dated 11 April 2008 and the office order dated 28 April 2008.

4. We have heard the learned Counsel for the parties.

5. The Petitioners contend that the policy of the 3/8 scheme under the Resolution dated 26 June 2007 was extended not only to the State Government but also to various other Zilla Parishads, who benefited from the scheme, and it was rightly extended to the Respondent – Board. It was contended that the Chief Engineer of Amravati Division of Respondent No.2 had also made a representation requesting extending the benefits. The Petitioners sought to contend that certain Writ Petitions were

filed challenging the benefits given to the Diploma holder Engineers like the Petitioners in promotion by the Degree holder Engineers, and it is because of the pendency of these petitions the scheme was sought to be withdrawn. It was also sought to be contended that there is no question of appointment of the Petitioners through the consultation of Maharashtra Public Service Commission. It was also contended that the provisions of the Act of 1976, more particularly Section 8(1) thereof, cannot be made applicable to the Petitioners' case, as this provision is for entry in service and not for further promotions. Therefore, it was contended that there is no reason whatsoever for withdrawal of benefits conferred, and the action being arbitrary, the same be set-aside and the benefits given to the Petitioners under the Government Resolution dated 26 June 2007, be restored.

6. Learned Counsel for the Respondent – Pradhikaran contended that Respondent No.2 is a statutory body established under the Act of 1976. The Rules for Engineer cadre are implemented on the basis of Rules of Engineers working in Irrigation Department, which Rules do not contain any such provision for 3/8 benefits, and therefore, when the provisions were challenged, the matter was examined, and it was found that the benefits under the Government Resolution dated 26 June 2007 were being wrongly extended, and therefore, withdrawn.

The reply affidavit is also filed on behalf of the State, taking an identical stand.

7. The fact that Respondent No.2 is a body constituted under a separate enactment is not and cannot be disputed. By the Government Resolution dated 8 February 1999, the Rules of the Irrigation Department were made applicable to Respondent No.2 as it is. These Rules do not contain any provision for 3/8 benefits. Even assuming Section 8 of the Act of 1976 is not to be made applicable, there has to be a positive Rule framed under the Act of 1976, which permits such a course of action. Except relying on the Government Resolution dated 26 June 2007, the Rule framed under the Act of 1976 has not been placed before us. Once the Petitioners are governed by the Recruitment Rules that do not contain such a benefit, a writ cannot be issued to enforce such a non-existing provision.

8. As regards the contention of the learned Counsel for the Petitioners that Section 8(1) of the Act of 1976 is not applicable and it is only applicable for initial entry, the Respondents have placed on record a decision of this Court in the case of *Hemant Rajabhau Vidhate & Ors. Vs. The Principal Secretary, Water Supply and Sewerage Dept. Mantralaya & Ors.* (Writ Petition No. 2100/2008 decided on 3 June 2008). A

perusal of the order would show that in this case, the promotion orders of the petitioners therein, who were working with the Respondent – Pradhikaran as similarly situated as the present Petitioners were cancelled. The Division Bench noted that the promotions were issued without complying with the requirement of Section 8-1 (A) of the Act of 1976, which requires consultation with the Maharashtra Public Service Commission, and therefore, the Division Bench declined to interfere with the order cancelling the promotions. We have not been shown that this order has been challenged or reversed. The Division Bench treated these promotions governed by Section 8-1 (A) of the Act of 1976. This decision supports the stand of the Respondent – Board and the State Government that the Government Resolution dated 26 June 2007, being contrary to Section 8-1 (A) of the Act of 1976, was withdrawn.

9. In light of this position, the Petitioners' prayer to restore the Government Resolution dated 26 June 2007 and quash the Government Resolution dated 11 April 2008, cannot be accepted.

10. We, however, note that the Division Bench in the case of *Hemant Rajabhau Vidhate (supra)* has made certain recommendations to the Government to complete the exercise. If

not already taken the steps, the Government would proceed further on those lines as communicated by the Division Bench.

11. The Writ Petition is dismissed. Rule discharged.
No costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

Sumit