

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2202 OF 2021

1. Santosh Shriram Gawhankar
Aged : 51 years Occ. Service,
R/o B-1, 5, Patrakar Sahaniwas,
Civil Lines, Nagpur
2. Shweta Salikanti Banerjee,
Aged: 43 years, Occ. Service,
R/o 87/88, Manish Nagar,
Nagpur
3. Vaishali Sameer Awate,
Aged: 43 years, Occ. Service,
R/o D-1103, Rohan Nilay-1,
Near Spicer School, Aundh,
Pune – 7
4. Ajay Janardan Singh,
Aged 51 years, Occ. Service,
R/o Flat No.1, 1st Floor,
Jawaharni Tower, Opp. Bansilal
Nagar, above Devgiri Bank,
Aurangabad

... Petitioners

-vs-

1. State of Maharashtra,
Through its Principal Secretary,
Department of Water Supply &
Sanitation, 7th Floor, Gokuldas
Tejpal Hospital Complex,
Lokmanya Tilak Marg, Mantralaya,
Mumbai 400 001.
2. Maharashtra Jeevan Pradhikaran,
4th Floor, Express Towers,
Nariman Point, Mumbai 400 021
Through its Member Secretary

... Respondents

WITH

WRIT PETITION NO.2157 OF 2022

1. Vinita W/o Vilas Karnewar
Aged about 53 years, Occupation Service
R/o 307 Pitshish, H B Estate, Sonegaon,
Nagpur
2. Vijay S/o Tulshiram Shende,
Aged about 54 years, Occ. Service,
R/o 123/5, New Amar Nagar, Nagpur
3. Gajanan S/o Kadubaji Danawe,
Aged about 53 years, Occ. Service,
MJP Quarter No.4, Maltekdi,
Amravati
4. Vinod S/o Gunderaoji Kakde
Aged about 54 years, Occ. Service,
R/o Plot No.164, H B Estate,
Sonegaon, Nagpur-440025.
5. Seema W/o Devanand Naik,
Aged about 53 years, Occ. Service,
R/o 39, Chintamani Nagar-1, Manewada,
Besa Road, Nagpur
6. Ratna D/o Sushen Biswas
(Ratna W/o Rohit Vishnoi),
Aged about 46 years, Occ. Service,
R/o Near Radhe Building, Ashirwad Nagar,
Nagpur
7. Priya W/o Umesh Mali,
Aged about 56 years, Occ. Service,
R/o Rahul Society, J Building, Flat No.2,
North main Road, Koregaon Park, Pune
8. Satish Balkrushna Bangale
Aged about 55 years, Occ. Service,
R/o Parshivar Housing Society, B-3/19,
Anand Nagar, Sun City Road, Vadgaon
(BK), Pune
9. Poornima d/o Dattatraya Date
(Supriya w/o Shailendra Raste)
Aged about 46 years, Occ. Service,
R/o Flat No.7, Shalini Residency,
Narayan Peth, Pune.

10. Vaishali W/o Ishwarsingh Patil
Aged about 28 years, Occ. Service,
R/o Flat No.3, Sheetal Galaxy,
Ashoka Marg, Nashik

... Petitioners

-vs-

1. State of Maharashtra,
Through its Secretary,
Water Supply & Sanitation Department,
Mantralaya, Mumbai -32.

2. Maharashtra Jeevan Pradhikaran,
Thorough its Member-Secretary,
Express Tower, 4th floor,
Nariman Point, Fort, Mumbai

3. Maharashtra Environmental Engineering,
Training and Research Institute, through
its Director (Administration), In front of
Office of the Revenue Commissioner,
ISP Road, Nashik Road, Nashik 422101

... Respondents

.....

Shri S. M. Puranik, Advocate for petitioners in WP No.2202/2021
Shri Anand Parchure, Advocate for petitioners in WP No.2157/2022
Smt S. S. Jachak, Assistant Government Pleader for respondent No.1.
Shri D. M. Kakani, Advocate for respondent No.2.
Shri P. D. Meghe, Advocate for Intervenor.
Shri S. D. Chopde, Advocate for Intervenor.

.....

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, JJ.

Arguments were heard on : October 18, 2022

Judgment is pronounced on : November 25, 2022

Common Judgment : (Per : A. S. Chandurkar, J.)

Since identical challenges are raised in these writ petitions, they have been heard together by issuing Rule and making the same returnable forthwith.

The communication dated 09/12/2021 issued by Department of Water Supply and Sanitation, State of Maharashtra to the Member

Secretary, Maharashtra Jivan Pradhikaran (MJP) directing the MJP to permit the petitioners to appear in the Departmental Professional Examination (DPE) and grant them three opportunities to clear the same within a period of one year so as to enable them to continue to enjoy the benefits secured by them pursuant to their promotion is under challenge.

2. In Writ Petition No.2202/2021 it is the case of the petitioners that they are Graduate Engineers. They have been appointed as Assistant Engineer (Grade-I) in the year 2002 after their selection by the Maharashtra Public Service Commission (MPSC). Since then they are discharging their duties with MJP. The promotional post of Executive Engineer is required to be filled in through four feeder posts which include Assistant Executive Engineer, Assistant Engineer (Grade-I), Sub-Divisional Engineer (Graduate Engineer) and Sub-Divisional Engineer (Diploma Holder). The same has been provided in Government Resolution dated 19/12/1970. These petitioners became eligible for promotion after acquiring seven years' experience. The petitioners along with other eligible candidates appeared in the DPE that was held in October 2003. In the result declared on 05/12/2003 all 26 candidates were declared to have failed. 13 of these candidates including the petitioners were direct recruits having been selected and

recommended through MPSC. The MJP took note of the aforesaid result and directed its Chief Administrative Officer to recheck/revalue the marks obtained by each candidate. Pursuant thereto the concerned Superintending Engineer was directed to receive applications along with requisite fees from the concerned candidates who had appeared in the DPE. The petitioners accordingly submitted their applications with requisite fees. The Committee was set up by MJP along with subject experts to examine the answer-sheets and upon revaluation it increased the marks of the candidates including the petitioners. The report of the subject experts was placed before the Committee set up by MJP which accepted the same. The petitioners were accordingly informed on 24/04/2004 that they had passed the DPE. Those candidates who were not declared to be successful after revaluation were required to appear and pass the said examination again.

3. The petitioners claim that they were promoted to the post of Executive Engineer in the year 2010. In the 129th Board Meeting of MJP held on 28/01/2013, the issue of increase in marks during re-verification was discussed. As per Item No.9 therein the Board decided that due to passage of considerable time, it would not be practicable to re-consider the decision to constitute a Committee for re-verification of the marks obtained in the DPE. Hence the benefit of increase in marks

as granted to 49 Engineers did not deserve to be withdrawn. By majority the said resolution was passed. It however appears that on 16/05/2015 the Principal Secretary, Water Supply and Sanitation Department issued a communication to the Member Secretary, MJP that there was no provision for re-verification of the marks obtained by a candidate in the DPE. This action on the part of MJP was not in accordance with the prevailing Rules. It was further stated that though the Board of Directors of MJP had no authority to condone such action that was contrary to the Rules, the same had been done by passing a resolution. The Member Secretary, MJP was therefore called upon to justify the said action and was further directed that if such action was not supported by any Rules, the same should be cancelled. In response, the Member Secretary, MJP on 26/05/2017 informed the Principal Secretary, Water Supply and Sanitation Department that the decision taken to re-verify the marks received by the candidates in the DPE appeared to be proper and the concerned candidates were not at fault in that regard. At the request of the unsuccessful candidates the answer papers had been re-verified by appointing a Committee. After conduct of the said DPE a period of more than fifteen years had elapsed. Some candidates had been further promoted and therefore reverting them would result in administrative difficulties and possible litigation. It was therefore recommended that no adverse action be

taken in the matter. The Water Supply and Sanitation Department was not satisfied with the said response and hence sought further explanation from the MJP in the said matter.

4. It is the case of the petitioners that they were eligible for being considered for further promotion to the post of Superintending Engineer. They however apprehended that they would not be considered for being promoted in the light of exchange of aforesaid communications. In the seniority list dated 16/03/2021 published by the MJP, the petitioners were appropriately placed therein. Hence on 14/06/2021 the petitioners submitted a representation to the Member Secretary, MJP with a copy thereof to the Additional Chief Secretary, Water Supply and Sanitation Department urging that they be considered for promotion to the post of Superintending Engineer. It is in that backdrop that this writ petition was filed on 22/06/2021 seeking a direction that the petitioners be considered eligible for promotion on the vacant posts of Superintending Engineer. During pendency of the writ petition, the Water Supply and Sanitation Department on 09/12/2021 through its Additional Secretary issued a communication to the Member Secretary, MJP in which it was stated that a Committee had been constituted by the MJP to re-verify the answer papers of the candidates who had appeared in the DPE. Though

there was a limit to grant maximum two marks in one subject and an aggregate of six marks, this limit was not followed by the concerned Committee and marks had been increased beyond the maximum permissible limit. Pursuant to deliberations held by the Principal Secretary with the Member Secretary, MJP on 07/12/2021, a decision was taken that it was not proper for the MJP to have re-verified the answer papers in the absence of any such provision in the relevant Rules. Such action could not be supported and the same was therefore liable to be cancelled. However taking such action at this point of time was likely to lead administrative confusion. It was therefore decided to grant a further opportunity to the concerned candidates to again appear in the DPE. This was despite the fact that the concerned candidates had crossed the age of 45 years. Hence three attempts were to be given to such candidates to clear the DPE in the next one year. Those candidates who were not to accept this option and who would not clear the DPE within a period of one year were liable to be proceeded against by the MJP in accordance with the Rules. As regards those Engineers who were in the zone of consideration for promotion they could be considered for promotion subject to condition that they would clear the DPE within a period of one year therefrom. MJP was also directed to fix the responsibility for such irregularity and take necessary disciplinary action. By amending the writ petition, this

communication dated 09/12/2021 has been put to challenge.

5. Writ Petition No.2157/2022 has been preferred by ten petitioners who were appointed as Assistant Engineer (Grade-II), Junior Engineer, Assistant Engineer (Grade-I) and Deputy Engineer. The said petitioners appeared in the DPE conducted in the year 2003 and 2008 but were declared unsuccessful. On re-verification of their answer papers pursuant to the application dated 22/04/2009, they were declared to have cleared the DPE. The petitioners state that they have received the benefit of increment pursuant to passing of said DPE. The petitioners were promoted to the higher post in 2007-08. These petitioners are also aggrieved by the communication dated 09/12/2021 issued by the Additional Secretary, Water Supply and Sanitation Department of the State Government to the Member Secretary, MJP and have thus filed the writ petition on 20/04/2022 challenging the said decision. In the aforesaid factual backdrop these writ petitions have been heard together.

6. Shri S. M. Puranik, learned counsel for the petitioners in Writ Petition No.2202/2021 and Shri Anand Parchure, learned counsel for the petitioners in Writ Petition No.2157/2022 submitted that the Water Supply and Sanitation Department of the State Government

through its Additional Secretary was not justified in issuing the communication dated 09/12/2021 requiring the petitioners to again appear in DPE and clear the same in three attempts within a period of one year. It was submitted that re-verification of the marks and increase in marks could not be attributed to any of the petitioners. Such re-verification was undertaken by MJP by constituting a Committee which included subject experts. The decision to re-verify the marks was considered by the Board of MJP in its 129th Board Meeting and that action was ratified on 21/08/2013. Considerable period of time had since elapsed and the petitioners have been receiving benefits of having passed the DPE in the form of increment. With passage of time they became eligible for further promotion to the higher post. There was no justification in seeking to re-open the events that had occurred in the year 2003 and 2008 of re-verification of answer papers of the DPE. The MJP having been found that none of the concerned Engineers were responsible for the decision to re-verify the answer-sheets, there was no justification in directing the petitioners to again appear in DPE. Even otherwise, these petitioners have crossed the age of 45 years and were thus exempted from appearing in the DPE. Despite noticing this aspect the impugned communication came to be issued. It was not the case of the State Government or the MJP that the services discharged by the petitioners pursuant to their

promotion were unsatisfactory and thus they were required to clear the DPE. After a lapse of more than fourteen years the petitioners could not now be directed to clear the DPE. It was therefore submitted that the impugned communication dated 09/12/2021 was liable to be set aside. Attention was invited to the order passed in Writ Petition No.9612/2022 (*Ramesh Mahadeo Mathkar vs. State of Maharashtra Thr. The Secretary, Water Supply and Sanitation Department and ors.*) decided at the Principal Seat on 27/09/2022 wherein a Co-ordinate Bench had granted relief to a similarly situated Engineer by directing that he could not be required to clear the DPE. Though the said order was not to be treated as a precedent for other cases, it was submitted that the said order has persuasive value for being followed. It was thus submitted that the petitioners be granted the relief as prayed for.

7. Ms S. S. Jachak, learned Assistant Government Pleader appearing for the Water Supply and Sanitation Department opposed aforesaid submissions. She invited attention to the affidavit in reply filed on behalf of the State Government to urge that in the Service Rules applicable to the MJP, there was no provision for revaluation of the marks obtained in the DPE. The Chief Administrative Officer of MJP had infact issued a communication dated 18/07/2012 stating therein that the direction to re-verify and thereafter increase marks of

candidates was not in accordance with the Rules. The exercise undertaken by the Maharashtra Environmental Engineering and Training Research Academy (MEETRA) was therefore unjustified. The Water Supply and Sanitation Department had rightly considered the fact that re-verification and excessive increase in the marks was not supported by the relevant Rules and therefore was justified in issuing the impugned communication dated 09/12/2021. No interference therefore was called for in the writ petition.

Shri D. M. Kakani, learned counsel for the MJP also opposed the writ petitions. According to him it was the petitioners who had sought re-verification of their answer-sheets despite the fact that there were no such provision in the relevant Rules. Though the Board of Directors had passed Resolution No.9 in the meeting of Board on 16/07/2013, in view of the communication dated 16/05/2015 issued by the Water Supply and Sanitation Department to the Member Secretary, MJP, the same was disapproved. It was also submitted that after verifying the record in the case of one Smt Manisha Mohan Parande in Writ Petition No.11520/2019 at the Principal Seat, order dated 30/03/2022 had been passed by the MJP in that regard. It was thus submitted that the petitioners had been granted three opportunities to clear the DPE within a period of one year and therefore no prejudice was being caused to the petitioners. If the petitioners were to clear the DPE, they

were entitled to the benefit thereof. It was thus submitted that there was not reason to interfere with the impugned communication and the writ petitions were liable to be dismissed.

8. In Writ Petition No.2202/2021, Civil Application No.1349/2021 has been filed by an applicant Shri Sachin R. Hole seeking permission to intervene in the writ petition. In the said application it has been stated that the applicant desires to bring on record various factual aspects concerning the present proceedings. As a vigilant person the applicant seeks to bring to the notice of the Court illegality at the MJP. Various documents have been filed alongwith application for intervention.

In the reply filed to the said application the petitioner No.1 has stated that the applicant is a busy body and he has a personal grievance against the petitioner No.1. It is stated that the address of the applicant is shown as the address of M/s Narmada Group of Constructions that has obtained a forged registration certificate from MJP. The application is stated to be motivated and therefore the same is not liable to be allowed.

Civil Application No.228/2022 has been filed by one Shri Vijay A. Purandare also seeking permission to intervene in the present proceedings. The applicant states that he was initially appointed as

Assistant Engineer (Grade-II) at the MJP. He was promoted as Deputy Engineer in 1999 and has thereafter retired from service on 30/04/2020. The applicant got knowledge of the fact that re-verification of the answer papers was permitted in the year 2015. The action of the MJP in seeking re-verification of the answer papers was not permissible and hence the petitioners were promoted in an illegal manner. The applicant therefore seeks permission to intervene in the proceedings and oppose the prayers made in the writ petition.

In the reply filed to the said application the petitioner states that they were directly appointed as Assistant Engineer (Grade-I) which is the cadre different from that of the applicant. The adverse allegations made in the application are denied.

9. In Writ Petition No.2157/2022, Civil Application No.1189/2022 has been filed by three applicants who claim that they are similarly situated as the petitioners and desire to support the cause of the petition. They pray that they be permitted to join as co-petitioners in the writ petition. In the reply filed to the said application, the MJP has stated that the applicants may not be permitted to join the present proceedings as co-petitioners for the reason that similar writ petition has been filed at the Principal Seat as well as at the Aurangbad Bench of this Court where the said applicants

could seek impleadment since they are serving within the territorial jurisdiction of the Principal Seat and the Aurangabad Bench respectively.

Considering the fact that the applicants are not rendering services within the territorial jurisdiction of the Nagpur Bench, this application is not entertained. The applicants are at liberty to raise their grievances in accordance with law.

10. We have heard the learned counsel for the parties as well as the intervenors at length and with their assistance we have perused the documents placed on record. The principal ground of challenge raised by the petitioners to the impugned communication dated 09/12/2021 is that the action proposed therein seeks to re-open the matter that had settled long back. The same is not only belated but also unjustified. We therefore propose to consider this limb of the challenge at the outset. In that regard reference is required to be made to the material events that have led to the passing of the impugned order. It is not in dispute that the petitioners in Writ Petition No.2202/2021 joined the services of MJP on 22/07/2002. As per the Service Rules, an Assistant Engineer (Grade-I) on which post the petitioners had appointed was required to pass the DPE after such appointment so as to be eligible to be promoted to the post of Executive Engineer (Grade-I). The said

petitioners appeared in the DPE that was conducted in 2003. In all thirty four Assistant Engineers (Grade-I) had appeared in that examination and only five of them were declared to have been passed. The petitioners were declared as failed in the result that was declared on 05/12/2003. Some of the candidates who had failed in the said examination sought re-verification of their marks. On 27/01/2004 the Chief Administrative Officer, MJP issued an office order in which it was stated that in the DPE that was conducted in October 2003 only 33% candidates had passed. In view of Annexure-I Section 3 Part 8 of the Maharashtra Public Works Department Manual, there was a provision for re-verification of the answer papers. Accordingly a Committee was constituted comprising of five members for re-verification of the answer papers of those candidates who had failed and had sought re-verification. Fees of Rs.50/- per paper was required to be paid. This fact was informed to the Chief Engineer, MJP on 06/02/2004. The petitioners accordingly deposited the requisite fees and their papers were re-verified. On 28/04/2004 the results were declared and the petitioners were stated to have passed the DPE.

The aforesaid facts indicate that initially the DPE was held in October 2003 and on re-verification being undertaken by the MJP by relying upon Annexure-I Part 3 Rule 8 of the Maharashtra Public Works Department Manual the results were declared in April 2004.

11. After this, for a considerable period of time, no objection of any nature whatsoever was raised to the aforesaid re-verification of the answer papers. It appears from the reply filed by the MJP that some officials raised an objection in the year 2012 to the procedure adopted of re-verification of the answer papers and thereafter declaring the results. The matter was considered in the 129th Board Meeting of MJP on 16/07/2013. Subject No.9 dealt with the aforesaid objection. The Board was however of the opinion that after passage of considerable time, it would not be practicable to re-open the matter. Hence by majority it was resolved not to cancel the increase in marks pursuant to re-verification of the answer papers or to withdraw the benefits already received by such Engineers. On 26/05/2017 the Member Secretary, MJP conveyed this aspect to the Principal Secretary, Water Supply and Sanitation Department by further bringing it to the notice of the said Authority that the concerned Engineers were not at fault in the entire process. Even on that date the MJP was of the view that a period of about nine to fourteen years having elapsed since the holding of the DPE it was not practicable to re-open the matter. In response, the Deputy Secretary, Water Supply and Sanitation Department sought information from the Member Secretary, MJP as regards the action taken in the matter especially in the light of the fact that there was no provision for re-verification of the answer papers. This

communication is dated 27/02/2018. Reminder was thereafter issued by the said Authority to the Member Secretary, MJP on 15/06/2018.

From the aforesaid, it can thus be seen that the DPE was held in the year 2003, 2004 and 2008. It is only in the year 2012 that certain complaints were received by MJP to the exercise undertaken by it for re-verification of the answer papers. The MJP in its 129th Board Meeting held on 16/07/2013 did not propose to take any action for the reason that considerable period of time had elapsed and that the concerned Engineers were not at fault. It is to be noted that the Honourable Minister for Water Supply and Sanitation was present at the Board Meeting in his capacity as Chairman, MJP. The State Government however sought some action to be taken in the matter for the reason that there was no provision for re-verification of the answer papers.

12. It is in this backdrop that the impugned communication dated 09/12/2021 came to be issued by the Deputy Secretary, Water Supply and Sanitation Department to the Member Secretary, MJP requiring the concerned Engineers to again appear and clear the DPE within a period of one year.

The question to be considered is whether the State Government has acted within reasonable time in the light of the facts on record ?

13. In matters where a challenge is raised to a seniority list or a grievance is raised by an aggrieved employee to the grant of some service benefits to another employee, the law is well settled that the aggrieved party has to act with diligence and seek appropriate remedy within a reasonable time. A stale claim cannot be permitted to be raised nor does making of repeated representations result in creating a fresh cause of action. Individual rights, if any, are required to be agitated in the manner prescribed within a reasonable period of time. In the present case however, it is the action of the State Government in requiring the petitioners to appear in the DPE after passage of a period of more than fourteen years that is under challenge. Such direction has been issued by the State Government for the reason that it has found that re-verification of the answer papers of the petitioners in the DPE that was held in the years 2003, 2004 and 2008 was not permissible. The issue therefore is whether the State Government as employer can be permitted to issue such directions after a lapse of considerable period of time that could result in disturbing the interse seniority as well as service prospects of the petitioners ?

It is an admitted position that there is no allegation of any material fact being suppressed by the petitioners nor is there any allegation of fraud having been practised by them. It may be observed that in such cases there would be no reason to preclude the employer

from taking appropriate action only on the ground that considerable period has lapsed or that action is sought to be taken with regard to events that had occurred prior to considerable period of time. In the present case it is seen that there is a difference of opinion between the MJP on one part and the Water Supply and Sanitation Department of the State Government on the other as regards permissibility of the exercise of re-verification. According to the MJP re-verification of the answer papers was undertaken by relying upon Annexure-I Part 3 Rule 8 of the Maharashtra Public Works Department Manual. The relevant Rule when broadly translated reads as under :

“ The Superintending Engineer or the officer of the equal rank shall notify the date of examination and the Executive Engineer shall constitute Examination Committee comprising two experienced Engineers (One) or Sub-Engineers in the Maharashtra Engineering Services. The Superintending Engineer shall be the Chairman of that Committee and shall revise and in case of necessity shall reform the set of question papers. However, under Rule 10 below when the Joint Committee is constituted for two or more Boards then in that case, the Superintending Engineer or other officer case can make appointment of more than Two Assistant Engineers or Sub-Engineers, however, their total number shall be equal to the quotient coming after dividing the total number of examine Junior Engineers by 50. After division by 50, if the remainder comes to 25 or more, then it shall be presumed to be 50 and if it is less than 25, then it shall not be taken into account. The number of appointed Engineers shall not exceed

the number coming after doing such calculations. The Committee shall specially check again the answer sheets of any candidate failed by very few marks.”

14. In the 129th Board meeting of MJP held on 16/07/2013 this very issue of correctness of the decision taken by the Administrative Officer of MJP of permitting re-verification of the answer papers was deliberated. In the said meeting it was resolved by majority that the concerned Engineers including the petitioners were not at fault and that it would not be advisable to re-open the said matter due to passage of time. The Water Supply and Sanitation Department however was of the view that such exercise was not permissible under Annexure-I Part 3 Rule 8 of the Maharashtra Public Works Department Manual and re-verification of the answer papers ought not to have been undertaken. It was more concerned with permitting such irregularity to remain on record and has therefore directed MJP to conduct the DPE requiring the concerned Engineers including the petitioners to clear the same in three attempts in one year. The MJP in all its communications with the State Government has taken a clear stand that it was guided by the Maharashtra Public Works Department Manual and that the Engineers who benefited by such re-verification were not at fault. It can thus be seen that the impugned communication dated 09/12/2021 is the outcome of such difference of

opinion between the two departments.

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 re-opened 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.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita