

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5232 OF 2023

- 1] Smt. Minatai Ashok Khillare
- 2] Rahul Mohan Rathod
- 3] Smt. Sayali Sanjeev Rane (Sayali Ishwar Chaudhari)
- 4] Smt. Pradnya Sachin Yede
- 5] Smt. Rekha Sunil Jadhav
- 6] Yogesh Nimba Salunke
- 7] Shrikant S. Chinchole
- 8] Manish Atmaram Chaure
- 9] Dinesh Daulat Thakre .. Petitioners

Versus

- 1] The State of Maharashtra,
Through the Principal Secretary,
Public Works Department,
Mantralaya, Mumbai 400 032
- 2] The State of Maharashtra,
Through the Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai 400 032
- 3] The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai 400 032
- 4] The Maharashtra Public Service Commission,
Cooperative Building, Maharshi Karve Marg,
Mumbai – 400 021, through its Secretary,
- 5] Shri. Nitin Dattatraya Ingale,
Age 49 years, Occu. - Service,
R/o. Plot No. 36, Sneha Nagar,
Station Road, Dhule .. Respondents

...
Advocate for petitioners : Mr. Ajay S. Deshpande
AGP for respondents no. 1 to 4 : Mr. A.S. Shinde
Advocate for respondent no. 5 : Mr. D.R. Irale Patil
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 28 JUNE 2023

ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate for the petitioners, learned AGP and the learned advocate for the respondent no. 5. At their request, the matter is being disposed of finally.

2. The petitioners who are the direct recruits to the post of Assistant Engineer (Electrical) Grade - II having been appointed in the year 2012 on the basis of their selection by the respondent no. 4 – Maharashtra Public Service Commission are aggrieved by the judgment and order passed by the Maharashtra Administrative Tribunal in Original Application no. 535 of 2019 which was filed by the respondent no. 5 to which they were not the parties and the Tribunal has accepted his claim to the seniority by adding 3/8th of the service rendered by him as a diploma engineer on the basis of the Government resolutions dated 29-11-1984.

3. The learned advocate Mr. Deshpande for the petitioners would at the outset point out that since the petitioners were not the parties to the Original Application filed by the respondent no. 5, in view

of the decision of the Supreme Court in the matter of ***K. Ajit Babu and others Vs. Union of India and others; (1997) 6 SCC 473***, as the petitioners are left with no alternative have preferred a separate Original Application in the same Tribunal under section 19 of the Maharashtra Administrative Tribunals Act, 1995. However, since ***K. Ajit Babu*** (supra) further lays down that in view of the law of precedent, decision by the previous bench in favour of the respondent no. 5 has to be followed in the dispute like the present one challenging the seniority list. If subsequent bench in the petitioners' matter dissents from the view taken in the earlier decision in favour of respondent no. 5, the matter has to be referred to a larger bench. However, since the respondent no. 1 has accepted and extended the benefit of 3/8th service to the respondent no. 5, the petitioners cannot seek any interim relief in their original application and for the limited purpose of having that benefit they have preferred the present petition.

4. Mr. Deshpande would endeavour to demonstrate as to how incorrectly and contrary to the recruitment rules dated 16-05-2009, the respondent no. 5 has been granted the benefit under the old GR dated 29-11-1984 which has been rendered obsolete since the subsequent GR has been issued in supersession of all the earlier GRs. He would, therefore, submit that the petitioners' interest needs to be protected till the time their original application reaches finality.

5. In the process, Mr. Deshpande also strenuously submits that the respondent no. 5 though was appointed on 23-02-2005, he acquired the requisite educational qualification only in the year 2018. The recruitment to the post of Assistant Engineer - II (Electrical) is only by way of nomination through the Maharashtra Public Service Commission. The entry of the respondent no. 5 is a backdoor entry and the respondent no. 5's entry in the seniority is not in accordance with the recruitment rules.

6. The learned advocate Mr. Irale Patil for the respondent no. 5 would support the order of the Administrative Tribunal. He would also place reliance upon the decision in the matter of **K. Ajit Babu** (supra) and would submit that so long as the order of the Administrative Tribunal in his favour is not quashed and set aside, he cannot be deprived of the benefits thereof. He would also point out that apart from the impugned judgment and order of the Administrative Tribunal in favour of the respondent no. 5 even a co-ordinate bench of the Administrative Tribunal at Mumbai has also taken a similar view in the similar fact situation in the matter of **Mr. Ninad Krishna Chavan and others Vs. The State of Maharashtra** (Original Application no. 695 of 2018 - dated 08-03-2023).

7. He would pertinently point out the observations in the judgment to the effect that some of the applicants therein who were

recruited prior to the recruitment rules of 2009 which were notified on 16-05-2009. Similarly placed applicants were held entitled to the benefit under the old Government resolution dated 29-11-1984 having secured graduation in Electrical Engineering prior to the recruitment rules, 2009. Interestingly, even a previous decision in similar set of facts in Original Application no. 380 of 2015 was referred to and relied upon.

8. We have appreciated the rival submissions and perused the papers.

9. Admittedly, the petitioners were not the parties to the Original Application no. 535 of 2019 preferred by the respondent no. 5. In the light of the ratio laid down in the matter of **K. Ajit Babu** (supra), they could have challenged the order in favour of the respondent no. 5 by preferring another original application which they have already done. In view of that ratio, the Administrative Tribunal in the matter of petitioners' original application will have to first record a dissent and even then the only course available would be to make a reference for constitution of a larger bench. Precisely for this reason, the scope for this Court to enter into the controversy and record even a superficial observation will not be available.

10. Still, if one is required to venture into the realm of controversy, suffice for the purpose to note that the original

appointment of the respondent no. 5 has never been under challenge. It is only a matter of his eligibility to seek seniority that is under cloud in view of the objection being raised by the petitioners. Admittedly, the petitioners were recruited in the year 2012 after the recruitment rules of 2009 came into effect. When there is no room for doubt that the respondent no. 5 was recruited prior to the coming into force of the recruitment rules, 2009, the services of the respondent no. 5 would be governed by the rules which were prevailing prior to the recruitment rules of 2009.

11. As is mentioned herein-above, not only in the matter of the respondent no. 5 but in the matter of few others, the different benches of the Administrative Tribunal have consistently taken a similar view.

12. The submission of the learned advocate Mr. Deshpande that Government resolution dated 29-11-1984 was rendered obsolete is fallacious inasmuch as the GR was superseded only by virtue of recruitment rules, 2009. Till that time, that GR was in force and if the respondent no. 5 has acquired the requisite qualification, by a degree which he obtained in 2008 but was validated by virtue of a written examination conducted by the AICTE in December, 2018, merely because in the meantime the petitioners entered into the cadre, the respondent no. 5 cannot be denied the benefit of acquiring the seniority

according to the recruitment rules which were governing his employment till the time the GR of 1984 was not superseded.

13. In view of such peculiar state-of-affairs, the only issue which we need to address is as to if in these circumstances, the petitioners can demonstrate some pressing need to seek the *status-quo ante* to be maintained as was prevalent prior to the decision of the government fixing the seniority of the respondent no. 5 vide order dated 29-03-2023 pursuant to the order passed in the Original Application no. 535 of 2019.

14. The petitioners are unable to demonstrate any such exigency or pressing need. Obviously, if and when the decision in their original application reaches finality and if they succeed, that would result in alteration of the seniority list suitably. In our considered view, no such exigency has occurred to cause any interference at this juncture. The interest of the petitioners can very well be protected by requesting the Administrative Tribunal to decide their Original Application as expeditiously as possible within some stipulated time.

15. Writ petition in substance fails and is dismissed.

16. However, the Administrative Tribunal shall decide the petitioners Original Application as expeditiously as possible and in any case within four months.

17. It is clarified that the observations made herein-above are confined to the decision of the petition and the Tribunal shall take its own decision on merits uninfluenced by these observations.

[SHAILESH P. BRAHME]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE