

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7652 OF 2022

Keshav S/o Yashvantrao Zond,
Age : 57 years, Occup. : Extension Officer (Agri),
Panchayat Samiti, Gangapur,
R/o : Plot No. 13, Survey No. 182/2,
Mhasoba Colony, Harsul Parisar,
Currently R/o : Panchayat Samiti Area,
Gangapur, Dist. : Aurangabad .. Petitioner

Versus

- 1] The State of Maharashtra,
Through Principal Secretary,
Rural Department Ministry,
Mantralaya, Mumbai – 32.
- 2] The Divisional Commissioner (Revenue)
Divisional Commissionerate,
Delhi Gate, Aurangabad
- 3] The Chief Executive Officer,
Zilla Parishad, Aurangabad
- 4] The Block Development Officer,
Panchayat Samiti, Gangapur,
Dist. Aurangabad .. Respondents

...
Advocate for petitioner : Mr. Devidas R. Shelke
AGP for the respondent – State : Mr. S.G. Sangale
Advocate for the respondent no. 3 : Mr. P.R. Nangare
...

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

**RESERVED ON : 27 JUNE 2023
PRONOUNCED ON : 26 SEPTEMBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By way of this petition under Article 226, the petitioner is seeking a writ of *certiorari* as well as the *mandamus* questioning the impugned order passed by respondent no. 3 - chief executive officer, Zilla Parishad, Aurangabad dated 20.06.2022 holding that his promotion to the post of extension officer was made due to a faulty seniority list dated 10.10.2017. By resorting to the provisions of the Maharashtra Zilla Parishad District Services (Post Recruitment Examination) Rules, 1985 ("**Rules**") he was demoted and reposted as the village development officer, Panchayat Samiti, Paithan.

3. The learned advocate for the petitioner would submit that the petitioner joined in the service of Zilla Parishad as gramsevak in 1986 and was due to retire in June 2023. He cleared the Zilla Parishad District Service post recruitment examination in the year 1994. He was thereafter promoted to the post of village development officer in the year 2004. The Zilla Parishad prepared a seniority list on 10.02.2017 for the village development officers to be promoted to the post of extension officer. He was standing at serial no. 2 in the seniority list. Accordingly, he was promoted to the post of extension officer (Agri.) in the year 2017, however, soon thereafter by the impugned order, he was demoted to the post of village development officer on 13.12.2017.

4. The learned advocate for the petitioner would submit that in writ petition no. 15060 of 2017, he had challenged the order of

demotion. On 13.06.2018, respondent no. 3 - chief executive officer made a statement before this Court that the order of demotion was cancelled. The writ petition was therefore disposed of on 13.06.2018. However, on 20.06.2022, by the impugned order, respondent no. 3 again demoted the petitioner to the post of village development officer.

5. The learned advocate for the petitioner would submit that since it is a matter of public employment, respondent no. 3 - chief executive officer was expected to have followed the principles of natural justice. No opportunity of being heard was ever extended even though it was a serious matter of demotion. Respondent no. 3 is even guilty of misleading this Court. In spite of the earlier order of demotion having been cancelled by making a statement before this Court he was bold enough to pass a fresh order for the same purpose and, therefore, the impugned order is clearly arbitrary and capricious and against the principles of natural justice.

6. The learned advocate would submit that even a copy of the impugned order was not served upon him which clearly indicates *mala fides* on the part of respondent no. 3 - chief executive officer in passing the impugned order.

7. The learned advocate for the Zilla Parishad referring to the impugned order as well as the affidavit in reply on behalf of respondent no. 3, by the officer of the cadre of deputy chief executive officer

submitted that the petitioner who was appointed as a gramsevak in the year 1986 was required to pass examination under the Maharashtra Zilla Parishad District Service (Post Recruitment Examination) Rules, 1985, in three chances and within a period of four years from the date of appointment, by virtue of rule 4 of the Rules. Rule 5(3) provided for the consequences on failure to pass the examination in the stipulated chances and within the period, which included even termination from service. He had failed to pass the examination in the requisite number of chances and within the period of 4 years from the date of appointment. He had appeared for the examination in 1989, 1999, 1991 and 1993 although he subsequently cleared it. Rule 5(3) was subsequently amended on 16.02.1999 and one of the consequences that was provided for failure to clear the examination as mentioned herein-above is in the form of loss of seniority. The seniority list prepared wherein the petitioner stood at serial no. 2 was ignoring the rule 5(3) as amended in the year 1999. The error was noticed and is merely rectified by passing the impugned order. It is not a matter of demotion, only the seniority list has been corrected pursuant to which, as a consequence the impugned order has been passed.

8. The learned advocate would submit that the promotion of the petitioner to the post of extension officer (Agri.) on 17.11.2017 was purely temporary in nature. He was made known that he was liable to be reverted at any stage and even he had executed such a writing on

16.11.2017 which is annexed as **R-1**. He would therefore submit that the seniority list of village development officer prepared which was not in accordance with the rules and has merely been corrected.

9. The learned advocate for the Zilla Parishad would then submit that the order of demotion challenged by the petitioner in writ petition no. 15606 of 2017 was cancelled since the High Court had granted the status quo and the writ petition was merely disposed of. The respondent no. 3 was not precluded from passing fresh order setting right the seniority and consequential reversion, which has been passed strictly in accordance with the rules and cannot be questioned.

10. The learned advocate would lastly submit that pursuant to the directions issued by this Court in writ petition no. 3688 of 2011, the government issued the circular dated 31.03.2017. Accordingly, a seniority list of the village development officers was prepared on 01.01.2021. The petitioner stood at serial no. 12. He did not raise any objection to that seniority list. There were only four posts of extension officer (Agriculture) which were vacant. Considering the fact that the petitioner was at serial no. 12, the respondent no. 3 had no option but to pass the impugned order merely in accordance with the directions of this Court and the government rules.

11. We have carefully considered the rival submissions and perused the papers.

12. The fact that the petitioner was required to clear the post recruitment examination within three attempts and four years and was unable to do so, has not been controverted by the petitioner by filing any rejoinder.

13. True it is that by virtue of rule 5(3) as was in existence prior to 1999 in such a situation of an employee failing to clear the post recruitment examination within the stipulated attempts and the period was to face the consequences such as (a) he would not be confirmed in the service on the post; (b) he was not entitled to release of future increments and the increments would be released from the date of passing the examination; and (c) termination from service. It was, therefore, in this sense the employee was bound to clear the post recruitment examination in the manner provided therein else was even liable to be terminated from the service.

14. It appears that this consequence of drastic action of termination was subsequently diluted by way of amendment of the rules in the year 1999 which thereafter provided loss of seniority as the consequence instead of termination.

15. Rule 5 of the Rules dated 08.11.1985 read as under :-

"5. Consequences of failure to pass the examination -

(1) A Parishad employee who fails to pass the examination within the period and chances specified in rule 4, shall not,

until he passes the examination or is exempt from passing the examination under rule 6:-

(a) be confirmed in the post which he is holding.

(b) be allowed to draw his next increment in the scale of post which he is holding.

(2) Increments so withheld under paragraph (b) of sub rule (1) shall become payable to a Parishad employee with effect from the date on which he passes the examination and future increments shall occur as if no increment was withheld. The arrears of increment shall not be admissible for the period during which his increment was so withheld.

(3) Notwithstanding anything contained in sub-rule (1) or (2), a Parishad employee appointed to the post by nomination after the appointed date who fails to pass the examination within the period and chances specified in rule 4 shall be liable for termination of his services."

This was diluted in the year 1999 whereafter sub-rule (3) of rule 5 is amended to following effect :-

"3. In rule 5 of the principal rules, for sub-rule (3), the following sub-rule shall be substituted, namely :-

(3) A Parishad employee who fails to pass the examination within the period and chances specified in rule 4, shall loose the seniority in the cadre of his post to all those Parishad Employees in the said post who pass the examination before him and also to all those who are senior to such Parishad Employee, below whom he is placed, and who may pass the examination after him but within the period specified in rule 4."

16. Though the petitioner cleared that examination subsequently it was not within the requisite chances and period. In fact, for failure to do so, he was liable to be terminated from the employment, however, could continue to be in the employment of the Zilla Parishad.

17. By way of implementation of the rules amended in the year 1999, respondent no. 3 seems to have prepared the seniority list ignoring the consequences provided under rule 5(3) and had promoted the petitioner. After realizing the error, the seniority list has been corrected. The petitioner never challenged it at least such a statement in the reply has not been controverted. The impugned order cannot be said to be an order of demotion in the sense it merely gives effect to the rules by providing the correct seniority list which has not been questioned by the petitioner. It is only as a consequence respondent no. 3 has declared the petitioner's promotion to the post of extension officer (agriculture) to be not in consonance with the rules and has asked him to resume the duty as a village development officer. It is not a matter of taking any decision against the petitioner who had even failed to question the seniority list wherein he was placed at serial no. 12.

18. Reliance of the learned advocate for the petitioner on the decision of this Court in the matter of **Anil Manikrao Kulkarni Vs. State of Maharashtra and others; 2010(3) Mh.L.J. 51** is clearly misplaced. Though the same rules were under consideration, the issue therein was that though respondents no. 3 to 7 therein had not passed the post recruitment examination and though the petitioner therein had cleared it he was not granted benefit of even the fitment

though he was ranking above them who were subsequently exempted from passing the examination having crossed the age of 45 years. Here it is a matter of grant of promotion in accordance with the seniority list in which the petitioner stands at serial no. 12 and there were only four vacant posts. He was found to have been promoted only on adhoc basis that too after furnishing a bond on 16.11.2017 agreeing for demotion to the original post. Admittedly, he had also executed an undertaking agreeing for reversion in case it was found to be not in accordance with the rules.

19. On the contrary, in a similar fact situation, in the matter of ***Babasaheb Sheshrao Patil and others V. The State of Maharashtra and others*** in writ petition no. 3688 of 2011 dated 26.08.2011, a co-ordinate bench of this Court had dismissed the petition by imposing costs.

20. We are in respectful agreement with the view taken in that matter and dismiss the petition.

21. Rule stands discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/