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

WRIT PETITION NO. 7207 OF 2022

Varsha Vihang Asolkar

..... Petitioner

Vs.

The State of Maharashtra & Ors.

..... Respondents

Mr. Vaibhav B. Dhage for the Petitioner

Mr. Ashok T. Gade a/w. Ms. Riya John, Mr. Navin Rathod for
Respondent No.4

Mr. Nitin Kamble, Dy. General Manager, HR - MSETCL

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : MARCH 27, 2023

ORAL ORAL (PER : ACTING CHIEF JUSTICE)

1. Rule.

Rule is made returnable forthwith.

By consent of the parties, taken up for final disposal.

2. The contention of the Petitioner is that the post of Dy. General Manager (IT) is required to be filled in by promotion. Reliance is placed upon the Administrative Circular bearing No.360 dated 21st March 2013.

3. The contention of the learned Counsel for the Respondents is

that subsequent to the Circular dated 21st March 2013, another Circular is issued dated 30th August 2016. Under the said Circular, as a one time measure, it is decided to fill in another post of Dy. General Manager (IT) from open market, as there is no other Dy.Head (IT) working in MSETCL. The learned Counsel submits that though the earlier advertisement was issued, the post of Dy. General Manager (IT) could not be filled in, as no suitable candidate was available. The one time measure has not yet fructified and the same still subsists. In view of the earlier decision taken by the Respondents to fill in the one post of Dy. General Manager (IT), the post is required to be filled in by nomination from open market. According to the learned Counsel, paragraph 4 of the Circular dated 30th August 2016 states that if in future, any vacancy remains / arises, then the same is to be filled in by promotion i.e. after the one time measure is fructified.

4. We have considered the submissions, paragraph No.4 of the Circular dated 30th August 2016 relied by the Respondents read thus:

“4. The existing vacant post of Head System (IT) (Now revised Designation as Dy. G.M. (IT) shall be, as a special case, filled in by resorting to the Departmental promotion from the existing Dy. Head (IT), if he fulfills the general criterion of promotion. The remaining one vacancy shall be filled in from open market, by resorting to the direct recruitment process as a onetime measure, as there is no other Dy. Head (IT) working

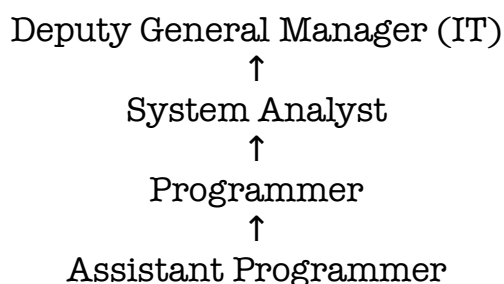
in MSETCL. However, thereafter, if any vacancy remains / arises in the post of Dy. G.M. (IT) in future for whatsoever reason, it shall be filled in by way of Departmental Promotion from the System Analyst, as per the hierarchy and revised method of filling.”

5. The post viz. Dy. Head (IT) is upgraded as a Dy. General Manager (IT) w.e.f. the date of Circular dated 30th August 2016. Paragraph 3 of the said Circular dated 30th August 2016 further states that one vacant post of Dy. Head (IT) is upgraded as Dy.General Manager (IT) w.e.f. the date of this Circular. The remaining one post of Dy.Head (IT) which is presently occupied will be automatically get abolished / discarded as soon as it will fall vacant either due to promotion of the incumbent to the post of Dy. General Manager (IT) as per the revised rules or for whatsoever reason.

6. Reading clause 4 as reproduced supra, it is manifest that the existing post of Dy. General Manager (IT) is decided, as a special case, to be filled in by resorting to departmental promotion from the existing Dy. Head (IT), if he fulfills the general criterion of promotion. Remaining one vacancy shall be filled in from open market, as a one time measure, as there is no other Dy. Head (IT) working in MSETCL. Clause 4 further recites that however, thereafter, if any vacancy remains/arises in the post of Dy. General Manager (IT) in future for whatsoever reason, it shall be filled in by

way of departmental promotion from the post of System Analyst, as per the hierarchy and revised method of filling.

7. In paragraph No.6 of the said Circular further gives the hierarchy as under:



8. The feeder cadre for the promotional post of Dy. General Manager (IT) is a System Analyst. The Petitioner is working as a System Analyst. The Administrative Circular dated 21st March 2013 is relevant to be considered. Note 6 is added to General Notes of MSEB Classification & Recruitment Regulations, 1961 under the Administrative Circular No.360 dated 21st March 2013. The same reads thus:

“2. In view of the above, the following Note as Note No.6 is added to General Notes of MSEB Classification & Recruitment Regulations, 1961, below existing Note No.5.

Note No.6

Method of filling the Selection Posts where sanctioned strength is less than 3:

- a) When Sanctioned strength is one, to be filled in by way of Departmental promotion and reservation is not applicable.*
- b) When Sanctioned strength is two, to be filled in by way of Departmental Promotion and reservation is applicable.*
- c) When Sanctioned strength is 3 or more, the 2/3rd posts are to be filled in by way of Departmental Promotion & 1/3rd by way of Direct Recruitment. The reservation will be applicable as per the rules.”*

9. As per aforesaid clause, when the sanctioned strength is two, the method of filling in the said post is a by way of departmental promotion and reservation is applicable.

10. It is not disputed by the Respondents that the sanctioned strength of Dy. General Manager (IT) is two. In view of that, the post of Dy. General Manager (IT) shall have to be filled in by promotion. Even if we accept the contention of the learned Counsel for the Respondents that as a one time measure, the said post was required to be filled in by nomination from open market, still the same would not enure to the benefits of the Respondents. The Respondents had taken up that exercising of filling in the post of Dy. General Manager (IT) by way of nomination. Advertisement was issued. Applications were invited but the Respondents could not get any qualified candidate for the same. The Respondents had already resorted to the one time measure of filling up the said post by nomination however, could not succeed. The sentence in clause 4 “(however, thereafter, if any vacancy remains / arises/ in the post of Dy. General

Manager(IT) in future whatsoever reason,” it shall be filled in by way of Departmental Promotion from the System Analyst) consciously recites the words, “if any vacancy remains / arises”. Even after an advertisement was issued to fill in the post by nomination from open market, the post remained vacant. In view of that also, the post will be required to be filled in by way of departmental promotion. Moreover, note 6 of the Administrative Circular dated 21st March 2013 referred to above states that the same is added to General Notes of MSEB Classification & Recruitment Regulations, 1961, below existing Note No.5. Meaning thereby, it was made part and parcel of the MSEB Classification & Recruitment Regulations, 1961. Whereas, we do not find the decision in the Administrative Circular dated 30th August 2016 being added to the MSEB Classification & Recruitment Regulations, 1961. Even Annexure-A to the Circular dated 30th August 2016 prescribed the methodology of filling in the vacancy of Head System (IT), revised designation - Dy. General Manager (IT) to be 100% by departmental promotion.

11. Considering all the aforesaid cumulatively, the irresistible conclusion that can be drawn is that the post of Head System (IT), revised designation - Dy. General Manager (IT) has to be filled in 100% by departmental promotion.

12. In light of the above, the impugned advertisement to the extent

of filling in post of Dy. General Manager (IT) by direct recruitment is set aside.

13. The Respondents may fill in the post of Dy. General Manager (IT) by departmental promotion from the eligible candidates.

14. Rule is accordingly made absolute.

15. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)