

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

WRIT PETITION NO.421 OF 2023

The State of Maharashtra,
Through its Principal Secretary,
(Energy), Industry, Energy and Labour Department,
Mantralaya, Mumbai-32.

..... **PETITIONER**

...V E R S U S...

Dinesh s/o Jagannath Khonde,
Aged about 50 years, Occu. Service,
R/o Hare Madhav Apartment,
First Floor, Khaparde Sadan,
Behind Bank of Maharashtra,
Bus Stand Road, Amravati.

..... **RESPONDENT**

Shri M.G.Bhangde, Senior Advocate with Ms N. P. Mehta, Assistant Govern-
ment Pleader for petitioner.

Shri Shashank Manohar, Advocate with Shri S.P.Palshikar, Advocate for
respondent.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 2nd FEBRUARY, 2023.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the order dated
16.09.2022 passed by the Maharashtra Administrative Tribunal, Nagpur in
Civil Application No. 369 of 2022 that was filed in Original Application No.26

of 2019. By the said order the Tribunal has issued a direction to the petitioner-The State of Maharashtra, through its Industry, Energy and Labour Department (for short, Department) to permit the respondent to continue to hold additional charge of the post of 'Chief Electrical Inspector' till a substantive promotion on the said post is made.

3. The facts giving rise to the filing of the present proceedings are that it is the case of the respondent that he being the senior most Sectional Engineer in the Department, he is entitled to be promoted to the post of Chief Electrical Inspector. Since the seniority list of Superintending Engineers working with the Department was not being published, the respondent filed Original Application No. 26 of 2019 praying that the Department be directed to publish a seniority list and thereafter promote the senior most Superintending Engineer as Chief Electrical Inspector. It was also prayed that till the Department published such seniority list, the respondent be promoted to the post of Chief Electrical Inspector in the meanwhile. In the said proceedings on 30.04.2019 the Tribunal issued directions to the Department to give additional charge of the post of Chief Electrical Inspector after 31.05.2019 in accordance with the seniority list maintained by it. The Tribunal further observed that the senior most person in that list be given such additional charge till finalization of the provisional seniority list. This was for the reason that the incumbent Shri S.R.Bagde holding the charge was

to retire on 31.05.2019. Since the Department did not comply with the aforesaid directions, the respondent filed Contempt Petition No.19 of 2019 before the Tribunal. On 28.08.2019 the Tribunal passed a further order and after referring to the Circular dated 05.09.2018, a direction was issued to the Department to comply with the earlier order dated 30.04.2019 in the light of the Circular dated 05.09.2018. It is the case of the Department that pursuant to the aforesaid direction the issue was considered and it was found that it would not be in the interest of the State Government to hand over additional charge of the post of Chief Electrical Inspector to the existing officer in the cadre of Superintending Engineer. The Tribunal thus on 09.10.2019 granted time of two more weeks to the Department to comply with the order dated 28.08.2019. The Department being aggrieved by the aforesaid direction challenged the said orders in Writ Petition No.7263 of 2019. On 18.11.2019 this Court noted that after considering the candidature of the respondent in terms of the Circular dated 05.09.2018 none of the Superintending Engineers working in the Department were found suitable for being given additional charge. It was held that while making adhoc arrangement administrative convenience had to be looked into. This Court thus set aside the order dated 09.10.2019 and directed the Tribunal to decide the Original Application expeditiously. It also observed that the earlier order dated 30.04.2019 had merged with the order dated 28.08.2019 and the same had been complied with. The respondent being aggrieved by the aforesaid judgment approached

the Hon'ble Supreme Court but on 03.01.2022 withdrew the Special Leave Petition.

4. The respondent thereafter filed Civil Application No.369 of 2022 in Original Application No. 26 of 2019 praying that the Department be directed to issue regular order of promotion in favour of the respondent as Chief Electrical Inspector for the reason that the respondent was the senior most officer from the Department who was eligible for regular promotion as per the seniority list published on 11.07.2022. It was also prayed that the Department be directed to permit the respondent to continue with the additional charge of the said post till a regular order of promotion as Chief Electrical Inspector was issued. By the order dated 16.09.2022 the Tribunal after considering the documents filed alongwith the Civil Application, allowed the said application in terms of prayer clause (ii) by which the Department was directed to continue the additional charge of the post of Chief Electrical Inspector with the respondent till a regular order of promotion was issued. The Original Application was also disposed of since the principal prayers had either been satisfied or were found to be complied with. Being aggrieved, the Department has challenged the said order of the Tribunal in this writ petition.

5. Shri M.G.Bhangde, learned Senior Advocate for the petitioner-Department has submitted that the Tribunal committed an error of jurisdiction in directing the Department to continue the additional charge of

the post of the Chief Electrical Inspector with the respondent till a regular order of promotion was issued. Referring to the prayers made in the Civil Application as filed, it was submitted that with the publication of the seniority list of Superintending Engineers on 11.07.2022, prayer clause (i) did not survive. The respondent had urged before the Tribunal that prayer clause (ii) in the Original Application had been substantially complied with. The other prayers seeking a direction to promote the respondent to the post of Chief Electrical Inspector till publication of the seniority list did not survive. Thus, without amending the substantive proceedings, it was not permissible for the respondent to have sought a further direction to permit the respondent to continue with the additional charge till a regular order of promotion was issued. By the order dated 23.04.2020 the Department had given additional charge of the post of Chief Electrical Inspector to the respondent and that arrangement was to continue until further orders. Hence there was no occasion for the respondent to seek a prayer as sought in the Civil Application. More so, when such prayer travelled beyond the main relief as sought in the Original Application. It was urged that there was no legal right to hold additional charge and it was for the Department to consider the manner in which such ad-hoc arrangement should be made. The Tribunal failed to consider the observations of this Court in the earlier round of the proceedings being Writ Petition No.7263 of 2019. It was then submitted that the Tribunal did not give any reason in the impugned order as to why the

respondent was permitted to continue to hold additional charge of the post of Chief Electrical Inspector till regular order of promotion was issued. The recruitment rules were yet to be finalised. Since the order was unreasoned, it was liable to be set aside. Moreover, disciplinary proceedings had been contemplated by the Department against the respondent and as this aspect was not brought on record of the Tribunal by the respondent, it was precluded from considering the effect of the same. On this count, it was submitted that the impugned order dated 16.09.2022 passed by the Tribunal was liable to be set aside.

6. Shri Shashank Manohar, learned Advocate for the respondent opposed the writ petition. He referred to the manner in which the respondent was promoted from time to time till he was given additional charge of the post of Chief Electrical Inspector by the order dated 23.04.2020. It was submitted that even today the respondent continued to hold such additional charge. Since the seniority list published on 11.07.2022 clearly established that the respondent was the senior most Superintending Engineer in the Department, there was nothing illegal with the direction issued by the Tribunal to permit the respondent to continue holding such additional charge till a regular order of promotion was issued. Reference was made to the Government Resolution dated 05.09.2018 in the matter of granting additional charge of a post. The Civil Application has been made in tune with the

prayers made in the Original Application and especially prayer clause (ii) thereof. Though the impugned order was dated 16.09.2022, the same was sought to be challenged in January, 2023 without furnishing any reasonable explanation for the cause of delay. The learned counsel sought to raise grievance with regards to the manner in which Enquiry Committee came to be constituted by the communication dated 05.09.2022 as well as the manner in which the said proceedings were being hastily conducted. Since it was undisputed that the respondent was the senior most Superintending Engineer and was already holding the additional charge since 23.04.2020, the Tribunal did not commit any error in directing continuation of such additional charge with the respondent till a regular order of promotion was passed. It was not necessary for the Tribunal to record any reason for its conclusion in these undisputed facts. It was thus submitted that no interference was called for with the innocuous direction issued by the Tribunal.

7. We have heard the learned counsel for the parties and we have perused the documents on record. The issuance of various directions by the Tribunal in Original Application No. 26 of 2019 on 30.04.2019, 28.08.2019 and 09.10.2019 is not in dispute. It is also evident from the record that in Writ Petition No.7263 of 2019 this Court set aside the order dated 09.10.2019 after observing that the order dated 30.04.2019 had merged with the order dated 28.08.2019 since making ad-hoc arrangement was considered

in terms of the Circular dated 05.09.2018 and thus directed the Tribunal to decide the Original Application on merits. The record indicates that the additional charge of the post of Chief Electrical Inspector was given to the respondent on 23.04.2020 and that arrangement was to continue until further orders. By virtue of that order the respondent continues to hold additional charge even today. The only question therefore to be considered is whether in these facts the Tribunal could have directed the Department to permit the respondent to hold additional charge of the post of Chief Electrical Inspector till a regular order of promotion was issued.

8. In this regard, we find that the observations of this Court in paragraph 7 of the judgment dated 18.11.2019 in Writ Petition No.7263 of 2019 are material and the same are reproduced as under:

“7. After hearing the learned counsels appearing for the parties and after going through the record, we are of the firm view that it was not a case to pass any sort of interim order. In making adhoc arrangement, the administrative convenience has to be looked into. It does not confer any legal right upon any person. The only thing is that the adhoc arrangement should not continue for years together. Be that as it may, the consideration was directed to be made in terms of Government Circular dated 05.09.2018 and that has been complied with. None of the Superintending Engineer working in the Department is found suitable for giving the additional charge of the post

of Chief Electrical Inspector”...

These observations would indicate that even in the matter of making ad-hoc arrangement by granting additional charge, administrative convenience has to be looked into and such ad-hoc arrangement does not confer any legal right upon any person. When the pleadings in Civil Application No.369 of 2022 that was moved by the respondent for disposal of the Original Application are perused, it can be seen that according to the respondent he being the senior most Superintending Engineer in the Department who was holding the additional charge, he was entitled to be continued till a regular order of promotion was issued. The Tribunal noticed that principal prayers in the Original Application had either been complied with or did not survive. However, while deciding the Civil Application, the only consideration by the Tribunal is in paragraphs 6 and 7 of the order dated 16.09.2022 which reads as under:

“6. So far as this C.A. for directions is concerned, learned counsel for the applicant submits that he is confining the relief to prayer Clause (ii) contained therein which is as follows-

(ii) further be pleased to direct the respondent to allow the applicant to continue with additional charge of Chief Electrical Inspector till regular order of promotion as Chief Electrical Inspector be issued.

He further submits that by granting this prayer the O.A. can be disposed of.

7. *Having regard to the documents attached to this C.A. for directions the O.A. can be disposed of. C.A. can be allowed in terms of prayer (ii) and the O.A. disposed of. O.A. is disposed of and C.A. is allowed.”*

The aforesaid would indicate that the Tribunal has not indicated any reason whatsoever for issuing the direction to continue the respondent to hold additional charge of the post of Chief Electrical Inspector till a regular order of promotion was issued. This Court having held in the earlier round of litigation between the same parties that administrative convenience had to be considered while making ad-hoc arrangement and same did not confer any legal right on any person, it was expected that the Tribunal would take into consideration the said observations. The only basis for the respondent to seek the prayers as made in the Civil Application was that he was the senior most Superintending Engineer. Even in that contingency it was for the Department to consider whether such additional charge could be continued with the respondent till regular order of promotion was issued. In fact, it has to be noted that by virtue of the order dated 23.04.2020, the respondent continued to hold such additional charge until further orders. There was no occasion for the respondent to seek a further direction that such arrangement should continue till a regular order of promotion was issued by the Department. It would be for the Department to consider the manner in which such ad-hoc arrangement has to be made which did not confer any legal right on such

appointee. The relevant recruitment rules are yet to be framed. When the respondent continued to hold additional charge until further order, there was no justification in directing the Department to continue with the arrangement till a regular order of promotion was issued in the absence of any legal right in favour of the respondent. The impugned order does not indicate any reason for issuing such direction. It was for the Department to consider that aspect and we find merit in the contention of the Department that there was in fact no cause of action for the respondent to file the Civil Application.

9. For aforesaid reasons, we find that the order dated 16.09.2022 passed by the Tribunal is unsustainable. It is accordingly set aside.

It is clarified that the parties would continue to be governed by the order dated 23.04.2020 by which additional charge of the post of Chief Electrical Inspector was granted to the respondent until further orders.

The writ petition is allowed in aforesaid terms. Rule is made absolute with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)