

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5565 OF 2021

Raghuweer Shashikant Sonawane	...Petitioner
Versus	
The State Of Maharashtra And Ors.	...Respondents

Mr. Sandeep Koregave for the Petitioner.
Mr. K.S. Thorat, AGP for the Respondent No.1/State.
Mr. Nitin Gangal a/w Prerna Shukla and Prapti Karkera for
Respondent Nos. 2 and 3/CIDCO.

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**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 24 APRIL 2024

P.C. :

1. By this petition, the Petitioner has challenged the order dated 16 March 2021 passed by the Respondent/CIDCO rejecting the objections raised to the seniority list prepared by Respondent/CIDCO in respect of the post of Assistant Engineer (Civil).

2. The Respondent/CIDCO had published an advertisement for recruitment to the post of Civil Engineer. The Petitioner and Respondent No.4 applied for the same. Both passed the selection process, the interviews and final results were declared. Thereafter, in

the provisional seniority list, Respondent No.4 was shown higher than the Petitioner. The Petitioner raised an objection regarding the same, which has been negated by the impugned order.

3. The impugned order suggests that the Petitioner has raised the contention that since the Petitioner belongs to other backward class, he should be senior to Respondent No.4. While, rejecting this objection, the Authorities have stated that Respondent No.4 is elder in age than the Petitioner and therefore, he has been rightly placed above in the seniority list.

4. The learned counsel for the Petitioner has firstly sought to contend that the Petitioner is belonging to other backward class. However it is pointed out by the Respondent, which is not disputed, that the appointment of the Petitioner is from open category, which is the same as Respondent No.4. Secondly, reliance is placed by the Respondent on clause 4(3) of the Maharashtra Civil Services (Regulations of Seniority) Rules dated 21 June 1982 framed under Article 309 of the Constitution of India. The learned counsel for the Respondent submitted that this Rule 4(3) states that when all parameters are identical between two candidates/appointee, then the one who is elder in age, should be made senior.

5. According to the Petitioner, the Petitioner and Respondent No.4 do not belong to the same category. This submission is based on the assertion that the Petitioner belongs to other backward class.

However, as stated above, the appointment is from open category, Both Petitioner and Respondent No.4 had applied for the same post and they were appointed pursuant to the same recruitment process.

6. The learned counsel for the Petitioner then sought to contend that the appointment letters and the actual date of joining are different and the Petitioner had joined the services earlier than Respondent No.4. The learned counsel for Respondent Nos. 2 and 3 submitted that after the appointment letters were issued, a period of joining was specified and within this period of joining, both the Petitioner and Respondent No.4 have joined and no capital can be made about the different dates of joining. Therefore, Rule 4(3) would squarely apply.

7. It was next contended by the Petitioner that having once published seniority list, it was not permissible to modify the same. Reliance is placed on the Government Resolution/Rule issued on 23 September 1988 that the seniority list shall not be ordinarily altered in the subsequent occasions and subsequent years. The Respondents have pointed out that the seniority list referred by the Petitioner was a provisional seniority list and the final seniority list is placed on record by way of rejoinder.

8. In these circumstances, Rule 4(3) as above has been rightly invoked by the Respondent/Authority. We, therefore, find no error in the decision of the Respondent/employer.

9. Writ Petition is accordingly rejected.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)