

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

WRIT PETITION NO. 11047 OF 2023

Shailesh Dhonu Dhalwale

....Petitioner

V/s.

Kalyan Dombivali Municipal
Corporation and anr.

....Respondents

Mr. S.S. Pakale, Senior Advocate *a/w. Mr. Nilesh Desai, for the
Petitioner.*

Mr. Sandeep Shinde, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 8 February 2024.

P.C. :

1. By this petition, Petitioner challenges the Judgment and Order dated 1 April 2023 passed by the Industrial Court, Thane dismissing Complaint (ULP) No. 180 of 2019 filed by him. In his complaint the Petitioner was aggrieved by the order of reversion dated 27 September 2019, by which he was reverted from the post of Junior Engineer, Electrical to his substantive post of Supervisor.

2. I have heard Mr. Pakale, the learned senior Advocate appearing for the Petitioner and Mr. Shinde, the learned Counsel appearing for the Respondent-Municipal Corporation.

3. It appears that by Order dated 31 May 2019, the Petitioner was promoted from the post of Supervisor- Electrical to the post of Junior Engineer-Electrical on purely ad-hoc basis. Petitioner's promotion was premised on possession of Diploma in Electronics and Communication Engineering. After effecting the ad-hoc promotion, a query was raised with the Maharashtra State Board of Technical Education, Mumbai by the Municipal Corporation on 28 May 2019 about equivalence of the Diploma possessed by the Petitioner with the Diploma in Electrical Engineering. The Maharashtra State Board of Technical Education opined by letter dated 5 July 2019 that Diploma in Electronics and Communication Engineering is not equivalent to the course of Diploma in Electrical Engineering. On the basis of the clarification so received from the Maharashtra State Board of Technical Education, the Municipal Corporation issued letter dated 27 September 2019 reverting the Petitioner from the post of Junior Engineer-Electrical to the post of Supervisor. The Industrial Court has proceeded to dismiss the complaint filed by the Petitioner.

4. Mr. Pakale has relied upon the Resolution adopted by the General Body of Kalyan Dombivli Municipal Corporation to suggest that the eligibility criteria for promotion to the post of Junior Engineer-Electrical includes the Diploma in Electronics and Communication Engineering. However, perusal of the Recruitment Rules would indicate that upto 1 June 2021, the post of Junior Engineer-Electrical was to be filled up by both modes of direct recruitment and promotion. For promotion to the post of Junior Engineer, the requisite qualification was the same as required for direct

recruitment. For direct recruitment, it was necessary to possess Diploma in Electrical Engineering from recognized University or an equivalent qualification. Those Recruitment Rules continued to operate till 1 June 2021. Though during the process of formulation of the new Recruitment Rules the General Body of Municipal Corporation had resolved to include the qualification of Diploma in Electronics and Communication Engineering as an eligible qualification for promotion to the post of Junior Engineer-Electrical, the said suggestion was not apparently accepted by the State Government when the Recruitment Rules were approved by Government Resolution dated 1 June 2021. As a matter of fact, as per the Government Resolution dated 1 June 2021, the method of promotion for filling up the post of Junior Engineer-Electrical is all together deleted in the finalized Recruitment Rules. Now the post of Junior Engineer-Electrical is to be filled 100% by Direct Recruitment and now there is no element of promotion. However, I am not concerned with the position of Recruitment Rules in operation after 1 June 2021. In the present case, the Petitioner was promoted on ad-hoc basis to the post of Junior Engineer-Electrical on 31 May 2019 and the Recruitment Rules which were prevalent on that date would be relevant. Admittedly, as on 31 May 2019, the Recruitment Rules provided for method of promotion for filling up the post of Junior Engineer, Electrical. However, the requisite educational qualification, even for promotion was, Diploma in Electrical Engineering from recognized University. Though the words 'equivalent' also appears in the Recruitment Rules, the expert body being the Maharashtra State Board of Technical

Education has opined that the course of Diploma in Electronics and Communication Engineering is not equivalent to the course of Diploma in Electrical Engineering. Neither the Industrial Court nor this Court is expected to sit in appeal over the opinion of the Expert Body. In my view, therefore it has been conclusively proved that the Petitioner did not possess the requisite eligibility criteria for promotion to the post of Junior Engineer-Electrical as on the date of his ad-hoc promotion on 31 May 2019. Mr. Pakale has relied upon the judgment of the Apex Court in the case of **State of Punjab V/s. Suman Lata, 1999 SCC (L & S) 1065** in support of his contention that the principles of natural justice were not followed while effecting Petitioner's reversion. In my view, considering the peculiar facts of the case where the Petitioner does not possess the requisite eligibility criteria for promotion to the post of Junior Engineer-Electrical, grant of any opportunity of hearing would have not made any difference to the ultimate result. In this regard the theory of useless formality propounded by the Apex Court in its judgment in **Aligarh Muslim University & Ors. V/s. Mansoor Ali Khan (2007) 7 SCC 529** would be relevant. In my view, therefore no prejudice is caused to the Petitioner in the facts of the present case on account of non-grant of opportunity of hearing.

5. No serious error therefore can be traced in the order of reversion or in the impugned judgment of the Industrial Court. The Writ Petition is accordingly **rejected**.

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2024.02.09
17:28:13
+0530

SANDEEP V. MARNE, J.