

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

Writ Petition No.10833 of 2024

Dhananjay Sadashiv Gaikwad ... Petitioner
V/s.
The State of Maharashtra and others ... Respondents.

Mr. Narendra V. Bandiwadkar, Senior Advocate a/w. Mr. Aniket Phapale i/b. Mr. Sachin D. Kadam for the Petitioner.

Mr. Abhijit Kulkarni for Respondent Nos.2 and 3.
Mr. Sumant R. Deshpande for Respondent No.5.
Mr. V.G. Badgujar, AGP for State-Respondent No.1.

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

DATE : 29 August 2024.

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P.C. :

Heard the learned counsel for the parties.

2. The learned Senior Advocate for the Petitioner submits that petition be taken up for hearing at the admission stage. List the petition on Board on **23 September 2024** under the caption 'For Directions' for deciding the request.

3. The learned Senior Advocate for the Petitioner seeks stay of the order of the Respondent-Corporation appointing Respondent No.5. Respondent No.5 is already working since March 2024 much before the petition was filed on 15 July 2024. Therefore, at this stage, we are not inclined to stay the order and restrain Respondent No.5 from functioning.

4. The contention of the learned Senior Advocate for the Petitioner is that the Petitioner was duly considered in the Select List from the degree holder channel and is senior to Respondent No.5 from that category. It is submitted that the Departmental Promotion Committee could not have looked into the issue of seniority, as the list was final. According to the Petitioner, explanation was called for as regards acquiring of degree which was submitted by the Petitioner and when final seniority list was published, there was no change and, therefore, the Petitioner was deemed to be correctly shown in the degree holders' category. According to the learned counsel for the Respondent-Corporation this was because complaints were received from other employees raising question on the Petitioner acquiring a degree qualification and the enquiry is still on-going and, therefore, the issue whether Petitioner needs to be promoted was deferred. The learned counsel for the Respondent-Corporation submits that the employees who have objected to Petitioner's inclusion in the degree holder category have not been joined and they should be joined.

5. *Prima facie*, the Respondent-Corporation is right in contending that in the facts and circumstances of the case the manner in which the Petitioner had acquired degree during the service, as complained by other employees, would require a reasoned order and there cannot be a deemed confirmation of the Select List. The objection of the other employees is not to the seniority of the Petitioner but whether the Petitioner is entitled to be treated as a

degree holder. However, since the decision is taken to defer the promotion of the Petitioner, we direct that Municipal Corporation would keep one post of Executive Engineer, which Petitioner is claiming, vacant till further orders to be passed in this petition, with liberty to the Respondent-Corporation to apply based on the outcome of the enquiry.

6. The learned Senior Advocate for the Petitioner states that there has been further meeting of the Departmental Promotion Committee and names of 11 Deputy Engineers have been considered. We are not inclined to stay the further process except the above directions, and the Respondent-Corporation would inform the promotees of the pendency of this petition. If the Petitioner succeeds to establish that he was entitled to the promotion, then appropriate orders as regards the seniority will have to be issued by the Respondent-Corporation which fact shall be informed to the concerned employees.

7. It is open to the Petitioner to join the 11 employees who are placed under the Select List pursuant to decision of Departmental Promotion Committee dated 10 July 2024 and those who have complained, as party respondents, for which we grant leave. We leave that decision to be taken by the Petitioner at the risk and cost of the Petitioner.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)