



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

WRIT PETITION NO. 4111 OF 2018

- 1) Shri Sushil Chokhaji Bambole,
Aged about 45 years, Occupation – Service,
Junior Administrative Officer, Panchayat
Samiti, Pomburna, District Chandrapur,
R/o. C/o. Umakant Tawade, Achaleshwar
Ward (Vidharthi Chowk), Chandrapur.
- 2) Ku. Tara Mukunda Choudhari,
Aged about 45 years, Occupation – Service
as a Junior Administrative Officer,
Panchayat Samiti, Sindewani, District
Chandrapur.

.... **PETITIONERS**

VERSUS

- 1) State of Maharashtra,
through its Secretary, the Department of
Rural Development and Water
Conservation, Mantralaya, Mumbai-32.
- 2) Zilla Parishad, Chandrapur,
through its Chief Executive Officer,
Chandrapur.
- 3) Divisional Commissioner, Nagpur,
Nagpur Division, Nagpur.

.... **RESPONDENTS**

Mr. V.D. Raut, Counsel for the petitioners,
Mr. S.M. Ukey, Addl. G.P. for respondent Nos.1 and 3,
Mr. A.P. Thakre, Counsel for respondent No.2.

**CORAM : NITIN W. SAMBRE
& ABHAY J. MANTRI, JJ.**

DATE OF RESERVING THE JUDGMENT : 07-02-24
DATE OF PRONOUNCEMENT OF THE JUDGMENT : 21-02-2024.

JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. Respective Counsel waive service.
3. The challenge raised in this petition is to the order dated 06-7-2018 passed by respondent No.2-Chief Executive Officer, Zilla Parishad, Chandrapur whereby the petitioners were reverted from the post of Junior Administrative Officer to Senior Assistant.
4. Succinctly, the facts of the case are as follows:-
 - (a) On 03-11-2004 petitioner No.1 was appointed by nomination with respondent No.2- Zilla Parishad on the post of Senior Assistant in the Scheduled Caste Category. On 23/24-12-2007 petitioner No.1 appeared for departmental examination and the result of the said examination was declared on 25-11-2008. In March 2009, he was confirmed. By order dated 21-7-2009, he had been promoted to the post of Superintendent.
 - (b) On 30-9-2003 petitioner No.2 was appointed to the post of Senior Assistant. She appeared for a departmental examination and the result of the examination was declared on 26-12-2006. She was confirmed for the post of Senior Assistant in March 2009. On 28-2-2008 she was promoted.

(c) On 31-3-2017 respondent No.1 issued a Government Resolution in respect of the fixation of the seniority list as per the Maharashtra Zilla Parishads District Service (Post Recruitment Examination) Rules, 1985 (for short "***Rules of 1985***"). The petitioners were appointed after 2000 and therefore, they were governed by the Rules of 1999. However, as per the Government Resolution dated 31-3-2017 (For short- '***the G.R. of 2017***'), the seniority list has been published wherein the names of petitioner Nos. 1 and 2 were shown at Sr. Nos. 244 and 214 respectively.

(d) On 07-4-2018 seniority list for the post of Junior Administrative Officer was published for the period from 01-1-2000 to 01-1-2008. Thereafter, the petitioners have been reverted from the post of Junior Administrative Officer to the post of Senior Assistant. Hence, the petitioners have preferred this petition.

5. Mr. V.D. Raut, learned Counsel for the petitioners vehemently submitted that the petitioners passed the departmental examination in the years 2007 and 2006 respectively and they were promoted to the next post in 2009. Therefore, passing the reversion order based on the G. R. of 2017, by respondent No.2 is illegal and contrary to the Rules. In fact, the said G.R. of 2017 is not applicable as they were passed the examination and also promoted prior to coming into existence of the

G.R. of 2017. Lastly, he submitted that there is no provision to revert the petitioners. He has claimed that no show cause notice was issued nor any opportunity of hearing before passing of the order impugned was offered. Therefore, he urged that the said order be set aside. To buttress his submissions, he has relied on the following judgments.

- (a) *State of Maharashtra v. Jagannath Achyut Karandikar*, 1989 Supp. (1) SCC 393.
- (b) *State of Madhya Pradesh v. Narmada Bachao Andolan and Another*, (2011) 7 SCC 639.
- (c) *P. Mahendran and others v. State of Karnataka and others*, (1990) 1 SCC 411.

6. Per contra, the learned Counsel for the respondents strenuously argued that as per the Rules of 1985, the petitioners failed to clear the examination within a prescribed period and therefore, as per the G.R. of 2017, they are not entitled to the promotion. Hence passing of the impugned order by respondent No.2-Chief Executive Officer is just, legal, and proper. In support of his submission, he has relied upon the Rules as well as the G.R. of 2017 and prayed for the dismissal of the petition.

7. We have appreciated the rival contentions. Perused the record, relevant Rules, G.R. of 2017, and Authorities.

8. A short but crucial question arises whether the passing of the impugned order by respondent No.2-Chief Executive Officer is just, legal, and proper.

So as to ascertain the real controversy, we would like to reproduce Rules 4 and 5 of the Rules of 1985 as under :

“4. Period and number of chances for passing examination -

(1) Every Parishad employee appointed after the appointed date shall be required to pass the Examination within three chances and within a period of four years.

(2) Every Parishad employee appointed before the appointed date shall be required to pass the examination within three chances and within a period of four years from the appointed date.

(3) Notwithstanding anything contained in sub-rule (1) or (2)

(a) If for any reason an Examination is not held in a particular year, that year shall be excluded in computing the total period of years mentioned in sub-rules (1) and (2);

(b) The Chief Executive Officer, may in exceptional circumstances for two chances to a Parishad employee or extend the time by not more than good and sufficient reasons to be recorded in writing, grant not more than two years for passing the examination.

5. Consequences of failure to pass the examination :

(1) A Parishad employee who fails to pass the examination within the period and chances specified in rule 4 shall not until he passes the Examination or is exempt from passing under rule 6-

(a) be confirmed in the post which he is holding;

(b) be allowed to draw his next increment in the scale of the post which he is holding.

(2) Increments so withheld under paragraph (b) of sub-rule (1) shall become payable to a Parishad employee with effect from the date on which he passes the Examination and future increments shall occur as if no increment was withheld. The arrears of increment shall not be admissible

for the period during which his increment was so withheld.

(3) Notwithstanding anything contained in sub-rule (1) or (2), a Parishad employee appointed to the post by nomination after the appointed date who fails to pass the Examination within the period and chances specified in rule 4 shall be liable for termination of his service.”

A bare perusal of sub-rule (1) of Rule 4 indicates that after the appointment, the employee should pass the examination in three chances and within four years. However, sub-rule (3)(b) of Rule 4 empowers the Chief Executive Officer to extend the time twice to clear the examination by the employee but not more than two years.

In the case at hand, petitioner No.1 was appointed as Senior Assistant on 03-11-2004. He appeared for the examination on 23/24-12-2007 i.e. within a period of four years from the date of his appointment. However, the result of the said examination was informed to respondent No.2-Chief Executive Officer by the Divisional Commissioner vide confidential communication dated 29-11-2008. Along with the said communication he has forwarded the result of the said examination, wherein the petitioner No.1 is shown to have cleared the examination as his name reflects at Sr.No.12.

9. Likewise, petitioner No.2 was appointed on 30-9-2003 as a Senior Assistant. She appeared for the examination on 23/24-12-2007 i.e. within a period of four years from the date of her appointment.

However, the result of the said examination was informed to respondent No.2-Chief Executive Officer by the Divisional Commissioner vide confidential communication dated 29-10-2007. Along with the said communication he has forwarded the result of the said examination, wherein the petitioner No.2 is shown to have cleared the examination as her name reflects at Sr.No.199.

It is pertinent to note that both these communications do not reflect as when the result was declared, but they only inform the declaration of the results vide letters dated 29-10-2007 and 29/11/2008 to respondent No.2-Chief Executive Officer.

10. It is important to note that the petitioners appeared for the examination at the prescribed time and passed the said examinations. However, the result of the said examinations was communicated belatedly i.e. after the prescribed period of four years. That does not mean that the petitioners have not passed the examination in the prescribed period as given in sub-rule (1) of Rule 4. Even assuming that the result was communicated by the office of the Divisional Commissioner belatedly to respondent No.2-Chief Executive Officer, that does not mean that the petitioners did not pass the examination in prescribed time. In our view, the declaration of the result relegate back to the date of examination. This Court so also the respondent

authorities is required to be sensitive to the fact that both the petitioners have attempted and appeared in the examination as were scheduled by the respondent.

11. Furthermore, sub-rule (3)(b) of Rule 4 empowers respondent No.2-Chief Executive Officer to extend the time by recording sufficient reasons in writing for a further period of two years. The case in hand is a fit to extend the period by recording sufficient reason. In spite of existence of sufficient reasons non-exercising discretion vested in respondent No. 2, shows that he failed to discharge his duty judiciously and has acted in unreasonable manner. Besides, it seems that the petitioners appeared for the examinations in time, however, the result of the examinations was communicated belatedly. That being so, it cannot be said that the petitioners were at fault for the non-declaration of the result in a reasonable time.

Moreover, in such an eventuality, the court has to consider and understand the scope of applicability of the doctrines of “*Lex non-cogit ad impossibilia*.” (the law does not compel a man to do what he can not possibly perform); “*impossibilium nulla obligatio est* ” (the law does not expect a party to do impossible). The declaration of the result of the examination was not within the powers or control of the petitioners. Hence they cannot possibly perform such act viz.

declaration of result. The law does not expect the party to do the act beyond their control. Which shows that petitioners were unable to perform it. Thus, it reveals that the doctrine of impossibility applies in the case at hand.

12. Apart from the above, it appears that in the years 2008 and 2007 results were communicated and in the years 2009 and 2008 the petitioners were promoted. However, subsequently based on G.R. of 2017 the petitioners were reverted to the post of Senior assistant. The G.R. of 2017 does not in express terms or otherwise provides for retrospective applicability. It is a settled position of law that “*every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.*” In such eventuality, in our view, the G.R. of 2017 has no retrospective effect and hence passing of the order impugned based on said G.R. appears to be not only arbitrary but also against the settled principles of law. In addition to above neither a show cause notice was issued to the petitioners nor opportunity of hearing was given to them. In such circumstances, certainly, it has caused great hardship to the petitioners.

13. Having considered the aforesaid discussion and the observations made in the above-cited authorities, in our view, it seems that the

passing of the impugned order dated 06-7-2018 by respondent No.2-Chief Executive Officer is not sustainable in the eyes of the law as same was passed for no fault or misconduct of the petitioners. Hence said order is liable to be set aside. Therefore, we deem it appropriate to pass the following order.

- (a) The impugned order dated 06-7-2018 passed by the respondent No.2-Chief Executive Officer, Zilla Parishad, Chandrapur is hereby quashed and set aside. As a sequel of above, all the consequential actions and decisions taken by the respondent No.2-Chief Executive Officer are also not sustainable and are hereby quashed and set aside.
- (b) It is declared that the petitioners shall be entitled to all the benefits including that of restoration to the position as was existing before passing of the impugned order, i.e. 06-7-2018 and consequential monetary benefits.
- (c) For all practical purposes, the services of the petitioners need to be considered as if were discharged on the post which was occupied before passing of the impugned order for the purposes of granting future benefits.

14. Rule is made absolute in the aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)