



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

WRIT PETITION NO. 4437 OF 2024

IN DADAJI PAWADE & OTHERS VERSUS THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.M. Sudame, Senior Advocate with and Shri A.M. Sudame, Counsel for the
petitioners,
Shri A.M. Kadukar, Assistant Government Pleader for the respondent no.1.
Shri S.M. Puranik, counsel for the respondent nos.2 and 3.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATED : JULY 30, 2024

(PER : NITIN W. SAMBRE, J.)

Heard the learned counsel for the parties.

2. The petitioners have sought quashing and setting aside of the notification dated June 03, 2019 to the extent of the post mentioned at Serial Number 5 viz. Junior Engineer, Assistant Engineer Grade-II and Sectional Engineer are classified in one cadre. Further prayer is for quashing and setting aside the mode of filling up of posts of Assistant Engineer Grade-I as provided under Serial Number 4 of the notification dated June 03, 2019. The petitioners have claimed that the directions need to be issued to consider the Assistant Engineer Grade-II alone for the purpose of promotion to the post of Assistant Engineer Grade-I and Sectional Engineers alone should be considered for being promoted to the post of Assistant Engineer Grade-II and Junior Engineers should be considered for the post of Sectional Engineer. Other ancillary reliefs are also claimed.

3. All these petitioners are in the employment of the respondent no.2-Nagpur Improvement Trust (hereinafter referred to as 'the NIT' for the sake of brevity). The petitioners have claimed to be belonging

to the reserved category and have further claimed that they are eligible in all respect to be appointed on the post of Assistant Engineer Grade-I (Civil). It is claimed that after conducting the written examination and viva-voce, orders of appointment were issued on various dates thereby appointing the petitioners. Some of the petitioners had applied for the post of Junior Engineer (Civil) and they were offered the said post of Junior Engineer (Civil) but since the post of Junior Engineer (Civil) was in Group-C Class-III, i.e. carrying lower Grade Pay, those petitioners declined the offer for appointment on the post of Junior Engineer (Civil) and accepted the offer of appointment to the higher post of Assistant Engineer Grade-II which not only carried higher pay-scale but the said post is also categorized in Grade-II/Group-B. After completion of probation by the petitioners, they were confirmed in service.

4. According to them, Rule 8 of the Technical and Executive Officers Recruitment and Promotion Rules, 2005 (hereinafter referred to as 'the Rules of 2005' for the sake of brevity) prescribes recruitment and promotion on the post of Assistant Engineer Grade-II for which the feeder cadre was Junior Engineer/Civil Engineering Assistant (Degree Holder) and the candidates must have completed three years/five years of service respectively for being appointed on the post of Assistant Engineer Grade-II. According to the petitioners, Rule 8(2) of the Rules of 2005 prescribes that the post of Assistant Engineer Grade-II can be filled in by direct advertisement after written and oral examination based on selection on merit.

5. It is claimed that the Junior Engineers who held Diploma in Civil Engineering and had completed five years continuous service on the establishment of the NIT can be held to be eligible for promotion and would be permitted to compete for selection. According to the petitioners, the Rules of 2005 were modified as 'The Nagpur Improvement Trust (Classification of Services, Recruitment and Promotions) Rules, 2019 (for short, 'the Rules of 2019') and published in the gazette on June 03, 2019. As per the modified Rules of 2019, the post of Assistant Engineer Grade-I was placed above the Assistant Engineer Grade-II, Junior Engineer and Civil Engineering Assistant. According to the petitioners, on September 18, 2019 promotion orders were issued to the Junior Engineers on the post of Sectional Engineers with effect from May 02, 2019. According to them, as per Rule 8(1) of the Rules of 2019, the degree holder Junior Engineers were required to be promoted as Assistant Engineer Grade-II after completion of service of three years. However, contrary to the aforesaid Rules, eight Junior Engineers were illegally promoted as Branch Engineers bypassing the claim of diploma holder Junior Engineers. It is claimed that the order dated September 18, 2019 is illegal. It is also claimed that against aforesaid illegal promotions, a representation was made claiming that Junior Engineer degree holders should have been promoted as Assistant Engineer Grade-II rather than Branch Engineers. It is claimed that the representation preferred by the petitioners is not yet decided by the respondent-Nagpur Improvement Trust. As a sequel of above, the petitioners claimed that they are stagnated for last ten years and such candidates who have less qualification because of wrong Rules of promotion are

given benefit and are made entitled to occupy the senior positions though the petitioners hold higher qualifications.

6. As such, it is claimed that the Assistant Engineer Grade-II cannot be treated as equal with all the Branch Engineers or Junior Engineers. The petitioners claimed that they are entitled to be treated as higher and superior in the status and pay to the diploma holder Junior Engineers and Branch Engineers. The aforesaid contentions are sought to be substantiated on the basis that though the Junior Engineer (Civil), Assistant Engineer Grade-II (Graduate) and Branch Engineer (Diploma holders) are in the same cadre and the post of Assistant Engineer Grade-II (Degree holders) and Junior Engineer is having higher pay band as the same is Class-II post. As such, it is claimed that the approach of the respondents in treating unequals equally and thereby discriminating the petitioners has resulted into violation of the fundamental rights guaranteed under the Articles 14, 16 and 21 of the Constitution of India.

7. Shri S.M. Puranik, counsel appearing for the respondent nos.2 and 3 would oppose the prayers and submits that without joining the newly appointed candidates, who were granted promotions and who are referred to in the petition being eight in numbers, as parties to the writ petition, the petitioners have approached at a belated stage i.e. after lapse of four years. It is claimed that there is no explanation for such a belated challenge. It is further claimed that the petitioners have only a right to be considered for the promotional post if the Rules provide so and as such he would claim that the petition is devoid of merits and is liable to be dismissed.

8. We have appreciated the rival claims.

9. We have carefully perused the Government Resolution dated July 01, 2005 and the Rules of 2019 which were notified on June 03, 2019. The fact remains that the posts of Assistant Engineer Grade-I, of which 50% are to be filled in from the Branch Engineers and balance 50% from the Assistant Engineers Grade-II. The Branch Engineers are the diploma holders having five years experience, whereas Assistant Engineer Grade-II are degree holders. The fact remains that the petitioners are from the cadres of Assistant Engineer Grade-II and Junior Engineers (Diploma Holders) and are placed in the pay-scale of Rs.9300-34800 with variance in Grade-Pay.

10. In exercise of powers under Section 89(1)(C) of the Nagpur Improvement Trust Act, 1936 the notification dated June 03, 2019 is published whereby the Rules for promotion are framed. We are concerned with the post of Assistant Engineer Grade-I (Civil), which is in the Pay-Scale of Rs.15,600-39,100 with Grade Pay of Rs.5,400. The post of Assistant Engineer Grade-I (Civil) is required to be filled in 50% by nomination and 50% by promotion. The source for promoting the candidate to the post of Assistant Engineer Grade-I is prescribed in the said notification as 50% to be filled in from Assistant Engineer Grade-II and balance 50% from Branch Engineer. The petitioners are competing for promotion to the post of Assistant Engineer Grade-I from Assistant Engineer Grade-II.

11. Apart from above, there appears to be a watertight compartment between the posts of Assistant Engineer Grade-II and

Branch Engineer for which the feeder cadre is Junior Engineer. The petitioners are claiming that the Branch Engineers cannot be said to be qualified to be considered for promotion to the post of Assistant Engineer Grade-I. In order to substantiate the said contention, though the reliance is placed on Entry No.(5), i.e. combined cadre of Junior Engineer (Civil), Assistant Engineer Grade-II (Degree Holders) and Branch Engineer (Degree Holders), same will hardly have any impact on the promotional avenues. The Rules are quite aptly clear to mean that 50% of the posts of Assistant Engineer Grade-I are to be filled in by promotion from Assistant Engineers Grade-II and balance 50% from Branch Engineers. In such an eventuality, it cannot be said that the Branch Engineers have encroached on the rights of the petitioners who are occupying the posts of Assistant Engineer Grade-II for claiming promotion to the post of Assistant Engineer Grade-I. We hardly see any deformity or contradiction *qua* the claim of Branch Engineers for promotion to the post of Assistant Engineer Grade-I as compared to that of the claim of Assistant Engineer Grade-II.

12. In that view of the matter, merely because the petitioners are claiming that the Assistant Engineer Grade-II is on a higher pedestal, that by itself will not give them leverage to claim 100% seats for promotion to the post of Assistant Engineer Grade-I. As far as the law relating to promotion is concerned, all that a candidate can assert is right of consideration to the promotional post and not an absolute right to claim the promotional post.

13. Apart from above, the petitioners cannot claim promotion as their right as the Constitution of India does not confer any such right. It is for the Executive to decide the method for filling up of vacancies of promotional posts based on the nature of employment and the functions that such promotee will be expected to discharge. This Court is not required to sit in review to decide whether the policy adopted for promotion is suited to select the candidate unless on the limited ground where it violates the principle of equal opportunity under Article 16 of the Constitution. It is not the case of the petitioners that they are completely excluded from being considered for the promotional post. The petitioners right to be considered for the promotional post can be said to be available at an appropriate stage. In such an eventuality it cannot be said that the petitioners have made out a case for showing indulgence.

14. That being so, the writ petition is devoid of merits and is dismissed with no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)