



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

977 CONT. PETITION NO. 610 OF 2024
IN WP/4497/2018

Monika D/o Mhatardeo Dhaytadak

VERSUS

Shri Nitin Gadre

...

Mr. S.S. Thombre - Advocate for the Petitioner

Mr. S. D. Ghayal – Addl.G.P. for Respondent/State

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CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.

DATED : 27TH FEBRUARY, 2025

PER COURT : -

1. Heard the learned Advocate for the Petitioner and the learned AGP for the State.

2. This Contempt Petition is filed for non-compliance of the order dated 13.10.2023, passed in Writ Petition No. 4497 of 2018. The relevant observations read as under : -

6. *In view of undisputed position of law, we are of the opinion that the claim of the petitioner ought to have been considered for selection to the post in question by giving her the benefit of horizontal reservation available against woman candidate from open category. As a matter of fact, in case the petitioner would be disallowed to be considered for appointment in this case, such an act on behalf of the MPSC would result in providing reservation to the open category candidate which is not the purpose for which*

the reservation to the reserved category candidates has been provided under law.

7. *For the reasons aforesaid, the writ petition is allowed. We, thus, also hold that the selection of the petitioner and subsequent appointment made pursuant to the interim order passed by this Court dated 04.05.2018, is lawful. She shall be entitled to all the benefits attached to her post.*

3. It is submitted by the learned Advocate for the Petitioner that, in one of the Original Applications before the Maharashtra Administrative Tribunal, there was a *status quo* order, due to which the Petitioner could not join on her post. He submits that due to the late joining of the Petitioner, which was not her fault, the said period is not counted for the purpose of promotion.

4. The learned AGP invites our attention to the reply affidavit filed by Respondent No. 3, dated 2nd August, 2024. We have gone through the same. Paragraphs 7 and 8 of the same read as under : -

7. *I say and submit that the Petitioner has wilfully misquoted the Order of this Hon'ble Court dated 13.10.2023 in her Contempt Petition. She has deceptively stated that this Hon'ble Court had allowed the Writ Petition 4497/2018 by observing that the petitioner is entitled to be promoted to the post of Executive Engineer from the date of her appointment order, i.e. w.e.f. 10th December, 2019. Whereas, this Hon'ble Court had only held her eligible for entitlement to all the benefits attached to her post i.e. Assistant Executive Engineer. Therefore, it is evident that the Petitioner is maliciously misleading this Hon'ble Court. As stated*

in para 6 and 7 above, the order of this Hon'ble Court has already been complied with.

I say and submit that, 21 Assistant Executive Engineers have been promoted to the post of Executive Engineer from the Select List for the year 2023-2024, vide Government Order, Public Works Department dated 24.07.2024. The final seniority list of the feeder cadre i.e. Assistant Executive Engineer dated 01.01.2023, was taken into consideration for granting promotion to the post of Executive Engineer (Civil) from the select list of the year 2023-2024. Since, the Petitioner was provisionally in the zone of consideration for promotion to the post of Executive Engineer, her name was recommended by the Public Works Department Departmental Promotion Committee in the meeting held on 29.05.2024. Accordingly, a proposal was forwarded to the General Administration Department for approval to the Select List for promotion to the post of Executive Engineer.

8. *I say and respectfully submit that the General Administration Department scrutinised the proposal and found that the Petitioner does not fulfill the criteria prescribed for promotion to the post of Executive Engineer. Apropos of the Recruitment Rules for the post of Executive Engineer, 4 years of minimum service in the feeder cadre of the Assistant Executive Engineer is mandatory for getting promotion to the post of Executive Engineer. (Hereto annexed and marked as Annexure R-1 is the copy of said Rules). The Petitioner has not completed four years of actual service in the feeder cadre i.e. Assistant Executive Engineer from the date of her joining (15.02.2021). Her Annual Confidential Reports for four complete years were also not available. In view of this, the General Administration Department rightly found that the Petitioner is not eligible for promotion to the post of Executive Engineer from the Select List of year 2023-2024.*

5. In view of above affidavit-in-reply, it is clear that the Petitioner was considered for promotion to the post of Executive Engineer. However, for want of completion of the minimum required service in the feeder cadre, she could not be promoted. Further, her Annual Confidential Reports for four years were also not available with the concerned answering Respondent. From this, it is clear that the Petitioner was considered for the said post, however, she could not be promoted due to the aforesaid aspects. We do not see that the Respondents have committed any contempt. Hence, the Contempt Petition stands disposed of.

6. The learned Advocate for the Petitioner submits that the Petitioner would avail the appropriate remedy before the appropriate forum against the non-consideration for the promotional post.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE