



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8025 OF 2025

Venkat s/o Naganna Mittewad ... **PETITIONER**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. Avinash S. Deshmukh, Advocate for petitioner
Mr. P.K. Lakhotiya, A.G.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

Date of reserving order : 19th November, 2025

Date of pronouncing order : 23rd December, 2025

ORDER :

The challenge in this Writ Petition is to the order dated 17/6/2025, passed by Maharashtra Administrative Tribunal, Bench at Aurangabad (MAT) in Original Application, No.105/2025. The said application was preferred by the petitioner herein. The main prayers in this Writ Petition are as follows :-

- (B) Rule may kindly be made absolute by issuing a writ of certiorari or any other writ, direction or order in the nature of writ of certiorari thereby quashing and setting aside the impugned order dated 17/06/2025 (Annex. O) passed by the learned Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad dismissing Original Application No.105 of 2025 filed by the petitioner.
- (C) Rule may kindly be made absolute by allowing Original Application No.105 of 2025 filed by the petitioner before the learned Maharashtra Administrative Tribunal, Bench at Aurangabad in terms of prayer Clauses (A) and (B) contained therein.
- (C-1) Rule may kindly be made absolute by holding and declaring that the impugned action of Resp.No.1 taken vide communication dated 03/01/2025 of deleting petitioner's name from the list of Executive Engineers who are in the zone of consideration for promotion as Superintending Engineers was wholly bad, unsustainable and untenable and by further directing the Resp.No.1 to take necessary corrective steps and include petitioner's name at an appropriate place in Annexure-a list attached to the communication dated 03/01/2025 and further consider his case for promotion as Superintending Engineer along with other Executive Engineers including his juniors whose

names are already included in the said list.

2. An interpretation of sub-clause (a) and (b) of clause (3) of the Government Resolution dated 7/5/2021 is for consideration in this Writ Petition. The said Government Resolution was said to have been issued in the following factual backdrop.

Way back in 2001, the State of Maharashtra had passed an Act, "Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, V.J.N.T., S.B.C. & O.B.C.) Act, 2001 (for short "Reservation Act of 2001"). The said Act was passed with a view to provide reservation in promotions. Thereafter, on 25/5/2004, the State of Maharashtra in General Administration Department (GAD) issued Government Resolution providing for reservation in promotions at all levels. Both, the Reservation Act of 2001 and the Government Resolution of 2004 were subject of challenge in various Original Applications before the Principal Seat of MAT. The challenge was successful. A Writ Petition, No.2797/2015 was, therefore, preferred against the decision of

the MAT, Mumbai. This Court, vide judgment and order dated 4/8/2017, set aside the MAT's judgment and order to the extent it held Reservation Act of 2001 ultra vires. The order of striking down the Government Resolution dated 25/5/2004 was, however, maintained. The judgment and order passed in the Writ Petition is now subject of challenge in Special Leave Petition, No.28306/2017/ Civil Appeal No.658/2022. The Apex Court has stayed the effect of the decision of the High Court dated 4/8/2017. It has been informed that the Apex Court has observed that all promotions effected during pendency of the matter before it would be subject to final outcome of the said proceedings.

3. In view of the Reservation Act of 2001 and the Government Resolution dated 25/5/2004, many employees belonging to reserved category got promotions. Some Open category candidates either remained on the post of their entry level or one step up. To bridge the gap between the two, the Government Resolution dated 7/5/2001 was said to have been issued. For better appreciation, the said Government Resolution needs to be reproduced in verbatim :

महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन निर्णय क्रमांक : बीसीसी -२०१८/प्र. क्र. ३६६/१६-ब
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय, मुंबई - ४०० ०३२
दिनांक : ०७ मे , २०२१

वाचा : (१) शासन निर्णय, सामान्य प्रशासन विभाग, क्र.२००१/१८८७/
प्र.क्र.६४/०१/१६-ब, दि. २५ मे, २००४.
(२) शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक : बीसीसी-
२०१८/प्र.क्र. ३६६/१६-ब दि. २० एप्रिल, २०२१

शासन निर्णय

सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक : बीसीसी-२०१८/प्र.क्र.
३६६/१६-ब दि. २० एप्रिल, २०२१ याद्वारे अधिक्रमित करून सुधारित शासन
निर्णय खालिलप्रमाणे निर्गमित करण्यात येत आहे.

२. मा. उच्च न्यायालय, मुंबई यांनी याचिका क्र. २७९७/२०१५ या प्रकरणी
दिनांक ४/८/२०१७ रोजी दिलेल्या निर्णयान्वये पदोन्नतीतील आरक्षण अवैध
ठरविले असल्याने व मा. सर्वोच्च न्यायालयाने मा. उच्च न्यायालयाच्या या
निर्णयास अद्याप स्थगिती दिलेली नसल्याने पदोन्नतीच्या कोट्यातील सर्व रिक्त
पदे दिनांक २५/०५/२००४ च्या स्थितीनुसार सेवाज्येष्ठतेने भरण्यात यावीत.

३. जे मागासवर्गीय अधिकारी/ कर्मचारी संदर्भाधीन क्र.१ येथील
दि.२५/०५/२००४ च्या शासन निर्णयातील तरतुदीनुसार पदोन्नतीमधील
आरक्षणाचा लाभ घेऊन सेवाज्येष्ठता यादीत वरच्या स्थानावर आले आहेत, असे
अधिकारी/ कर्मचारी -

(अ) दि.२५/०५/२००४ रोजी किंवा त्यापूर्वी शासन सेवेत रुजू झाले
असल्यास ते त्यांच्या दि.२५/०५/२००४ रोजीच्या सेवाज्येष्ठतेनुसार पुढील
पदोन्नतीस पात्र ठरतील व ;

(ब) दि.२५/०५/२००४ नंतर शासन सेवेत रुजू झाले असल्यास ते त्यांच्या
सेवा प्रवेशाच्या मूळ सेवाज्येष्ठतेनुसार पुढील पदोन्नतीस पात्र ठरतील.

४. उक्त पदोन्नत्या निव्वळ तात्पुरत्या स्वरूपात मा. सर्वोच्च न्यायालयाच्या
विशेष अनुमती याचिका क्र. २८३०६/२०१७ वरील अंतिम निर्णयाच्या अधीन

असतील. अशी कार्यवाही करतांना पदोन्नतीमधील आरक्षणाचा लाभ घेऊन सध्याच्या सेवाज्येष्ठता यादीत वरच्या स्तरावर आलेल्या कोणत्याही मागासवर्गीय अधिकारी/ कर्मचाऱ्यांना पदावनती करण्यात येऊ नये.

4. The petitioner did Diploma in Civil Engineering (D.C.E.) in the year 1988. He entered services as a Junior Engineer in Construction Division, Zilla Parishad, Nanded in May 1990. During the course of his service, he did A.M.I.E. (Civil) in 2006. After having completed five years service as Junior Engineer, he was conferred with the status of Sectional Engineer w.e.f. 01.04.1996. According to the petitioner, his entry in the service was with 'Local Self Government'. The Chief Executive Officer, Zilla Parishad, Nanded was the appointing authority. Sectional Engineer's status was conferred by the Divisional Commissioner in his capacity as Head of Administrative department dealing with 'Local Self Governments'. In view of the petitioner to have completed A.M.I.E. (Civil), Nanded Zilla Parishad conferred upon him promotional status of Assistant Engineer, Grade-2, Gazetted Officer Group-B (Junior Level). It was granted in January 2007 with retrospective effect from July 2000.

5. According to the petitioner, the Public Works

Department (P.W.D.) and the Water Resources Department (Irrigation Department) of the State Government are concerned for allowing appointment of Junior Engineers (Civil) working in the District Technical Services in Zilla Parishad as Sub Divisional Engineers (S.D.E.'s)/Sub Divisional Officers (S.D.O's) in Maharashtra Engineering Service (M.E.S.) Group-A through mode of promotion as per the provisions of relevant Recruitment Rules by providing specific quota therefor. Although, it was shown as a promotion, it was infact an appointment for the first time in the state government service. Since, then the petitioner discontinued to be in service with the Zilla Parishad. The petitioner's entry as S.D.E. in February 2008 with the state government was his first appointment in the state services. This was infact not the promotion in real sense. Considering the policy of reservation and as the petitioner belongs to reserved category, the benefit thereof was to be given to him for giving him appointment as Sub Divisional Engineer. In the year 2016, the petitioner was promoted to the post of Executive Engineer. This time too, he was given benefit of his reserved category. Since, promotion to the post of Executive Engineer, his name came to be included in the

gradation list thereof.

6. According to the petitioner, by virtue of Rule 4 of The Maharashtra Civil Services (Regulation of Seniority) Rules,1982 (in short 'the M.C.S.R,Rules,1982') the seniority of a government servant shall ordinarily be determined on the length of his continuous service therein. In the gradation list of Executive Engineers dated 12.06.2023, the petitioner was at Serial No.132. In February 2024, a communication was issued to Chief Engineers of all Public Works Regional Divisions forwarding them a list of 31 Executive Engineers and soliciting their information in requisite proforma as they were in the zone of consideration for the post of Superintendent Engineer. Petitioner's name figured in the list of those 31 Executive Engineers. The process of filling up the posts of Superintendent Engineer by promotion for the year 2023-24 was duly completed. Since, the petitioner was junior in the list, he could not be promoted.

7. Again, a process for filling up posts of Superintendent Engineer for the year 2024-25 commenced. A list of 12 Executive Engineers in the zone of consideration was

circulated to the respective Heads of the departments calling for requisite information of those Executive Engineers. To the utter surprise of the petitioner, his name did not figure therein. Some of the juniors to the petitioner in the gradation list were shown in the zone of consideration. After having inquired into the matter, the petitioner realized that he was kept out of the zone of consideration in view of the Government Resolution (G.R.) dated 07.05.2021 and the developments in the judicial proceedings, in respect of challenge to the reservation Act 2001 and G.R. dated 25.05.2004. The petitioner, therefor, first approached the Maharashtra Administrative Tribunal (M.A.T.). Since, he was unsuccessful in his Original Application before the M.A.T., the present petition has been filed.

8. The M.A.T. found the state government to have been justified in removing the name of the petitioner from the gradation list and the zone of consideration for promotion to the post of Superintendent Engineer, in view of the purposive interpretation and the fact the petitioner to have been promoted twice considering his social status/reservation policy and the state government's decision in the changed

circumstances to ensure that, those who could not be promoted on account of having not belonged to reserved category, be given first opportunity for promotional avenues.

9. What has been referred hereinabove is part of the pleadings and the submissions made by the learned counsel for the petitioner.

10. The learned A.G.P. would on the other hand submit that, the petitioner was first promoted way back in 2008 and then in 2016. He got both the promotions in view of his social backward status. According to him, during the pendency of the matter before the Hon'ble Apex Court, the state government in deference to the decision in Writ Petition No.2797 of 2015, decided to ensure that other government employees, who remained behind or could not be promoted on account of they being open category candidates, get opportunity to compete for next promotional avenues, the G.R. dated 07.05.2021 issued. According to learned A.G.P., the case of the petitioner would be covered by Clause- 3(B) of the said G.R. According to him, the petitioner entered the government service post 25.05.2004. Therefore, the petitioner's first entry in the service

way back in the year 1988 would be the basis for determining his seniority in the service for the purposes of the said G.R. The learned A.G.P. therefore, justified the order impugned herein.

11. We have considered the submissions advanced. Perused the judgment and order impugned herein and documents relied on.

Admittedly, the petitioner entered the service with the Zilla Parishad, Nanded (Local Self Government) way back in 1990. It is only in 2008, the petitioner entered the state government service by joining on the post of Sub Divisional Engineer. The transition from the service with Zilla Parishad, Nanded to the State Government was by virtue of a promotion. The order dated 25.02.2008 issued in that regard by the state government speaks in volumes. The petitioner, therefore, could not be heard to say that, it was an appointment and not promotion. The fact however, remains that for the first time in 2008, the petitioner entered the state government service. True, for all practical and other service benefits, the petitioner's past services would necessarily be counted. Thereafter, in

2016, the petitioner was promoted to the post of Executive Engineer. Thus, the petitioner got two promotions. On both the occasions, his social status weighed with the authorities to grant him promotions. As stated above, with a view to bridge a gap between those who got accelerated (so to say literally) promotions on account of reservation policy and those remained behind for want of such status, the G.R. dated 07.05.2001 was issued. Admittedly, the petitioner's name figured at Sr.No.132 in the gradation list of Executive Engineers. Even for promotion to the post of Superintendent Engineer, the petitioner's name was in the zone of consideration for the year 2023-24. It is only in the year 2024-2025 and in view of the state government's policy, his name was removed from the zone of consideration for promotion. Close reading of the pleadings and the stand taken by the respondent/State before the M.A.T., it is crystal clear that it banked/relied on Clause-A of the G.R. dated 07.05.2001. The learned A.G.P. conveniently and wisely changed the stand and for the first time in the Writ Petition relied on Clause (B), to submit that the petitioner's first entry in the service, which dates back to the year 1988 is to be considered.

12. Close reading of both Clauses 'A' and 'B' admits of not more than one interpretations. Both clauses speak of date of entry in the government service. It has nothing to do with entry in the service of Local Self Government, which precedes the entry in the government service. It specifically speaks of an employees entry in service (necessarily government) either on 25.05.2004 or before or after the said date. Since, the petitioner entered the state government's service in 2008 for the first time his entry in the state services would necessarily be counted for seniority to be considered for promotional avenues.

13. Needless to mention that no government servant/officer has vested right to claim promotion. He has however, legitimate expectation and even the right to be considered for promotion. Whether the petitioner is to be promoted or not and facts to be considered therefor, would be the matter to be decided/considered by the competent authority/committee constituted therefor.

14. For all the aforesaid reasons, we are not at one with the findings recorded by the M.A.T. Interference with the

order impugned herein is therefore, warranted. The Writ Petition therefore, succeeds and is thus, allowed setting aside the order dated 17.06.2025 passed by the learned Maharashtra Administrative Tribunal (M.A.T.) rejecting the Original Application No.105 of 2025.

15. The Original Application No.105 of 2025 is allowed with a direction to the respondent/State to consider the petitioner's entry in the State Government's service in the year 2008 for all practical purposes, including gradation/seniority for further promotional avenues. It is however, made clear that, it is for the Committee constituted for filling up the post of Superintendent Engineer by promotion, to consider whether the petitioner is to be considered for the said post.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

fmp/-