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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 36118 OF 2025

Pradip Bansilal Phulpagare & Ors.

...Petitioners

Versus

The State Of Maharashtra,  
Through The Cheif Secretary

...Respondents

WITH

WRIT PETITION (L) NO.24805 OF 2025

(Not on board. Taken on board)

Mr. Anand Pai a/w. Mr. Sachin Mhatre, Ms.Disha Shirodkar, Ms. Smriti Sanjeev  
i/b Mhatu Law Associates, for Petitioners.

Ms. Jaymala Ostawal, Addl.G.P.for Respondent/ State.

Mr. P. G. Lad a/w. Ms.Sayali Apte, for Respondent Nos. 4 & 5/MHADA.

Mr. R.R. Shetty, Senior Advocate i/b. Vishal P. Shirke, for Respondent Nos.6 to 8.

CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

DATE: 10th December 2025

P.C.

WRIT PETITION (L) NO. 36118 OF 2025

1. We have heard learned counsel for the parties in this Petition.
2. This Petition is filed praying for the following substantive reliefs:
  - a. This Hon'ble Court may be pleased to issue a Writ of Certiorari, or any other appropriate Writ, Order or Direction in the nature of Certiorari and after calling for the records and proceedings from the Respondents, quash and set aside the impugned actions at Exhibit -"A" and Exhibit -"B" together with all consequential steps taken in furtherance thereof.

b. This Hon'ble Court may be pleased to issue a Writ of Mandamus and/or any other Writ in the nature of Mandamus directing the Respondents, to strictly implement and abide by the MHADA Executive Engineers (Recruitment) Rules 1997, including Rule 5, and to maintain separate seniority lists for the three distinct streams of Deputy Engineers.

C. This Hon'ble Court may be pleased to issue a Writ of Mandamus and/or any other Writ in the nature of Mandamus directing the Respondents, to convene the Departmental Promotion Committee (DPC) and to proceed with promotions to the post of Executive Engineer strictly in accordance with MHADA Executive Engineers (Recruitment) Rules 1997, by preparing and finalizing MHADA lists for the three distinct cadres of Deputy Engineer (Civil) as on 31 December 2023 and 31 December 2024, in terms of MHADA's letters dated 30 April 2025 and 4 July 2025.

d. Pending the hearing and final disposal of this Petition, the Respondents be restrained from altering or amending the existing MHADA Executive Engineer (Recruitment) Rules 1997, and Respondent Nos. 1 to 3 be directed not to entertain or approve any proposal for such modification from Respondent Nos. 4 & 5 without following due process of law and without affording the Petitioners an opportunity of being heard and that any such proposal be reheard in accordance with law, with law with liberty to the Petitioners to challenge any decision adversely affecting their rights.

e. Pending the hearing and final disposal of this Petition, the Respondents be restrained from implementing the impugned actions at Exhibit "A" and Exhibit "B", and no promotions be effected the basis of the impugned Consolidated Seniority List dated 20 October 2025;

f. Pending the hearing and final disposal, the Respondent no. 1 be restrained from taking any action on the impugned Resolution at Exh. A made by Respondent No. 2 to Respondent no. 1.

g. In the alternative to prayer clause (e) above, this Hon'ble Court may be pleased to direct the Respondent Nos. 4 and 5 to prepare fresh seniority lists for the three distinct streams of Deputy Engineers (Civil) as on 31st December 2023 and 31st December 2024 in accordance with the MHADA Recruitment 1997 Rules and thereafter proceed with promotion in accordance with the said lists.

3. The issue which has arisen is in the context of Rule 5 of the MHADA Executive Engineers Recruitment Rules, 1997. In regard to the cadre of Deputy Engineer, the pattern which is being followed as per the existing rule is to have three Seniority lists in the said cadre viz. Diploma holders, Degree Holders and Direct Recruitment Degree holders.

4. On behalf of the Petitioner and private Respondents it appears that there are concerns and disputes raised in regard to feasibility and validity of the said Rule. The nature of the concerns/disputes being that the prejudice is being caused to the employees in this cadre who come from different sources that is 'direct recruitment' and 'promotees'. In these circumstances, it appears that there was also prior litigation as also representations made to MHADA. The MHADA appears to have moved a proposal with the State Government the contention of the Petitioner and the private Respondents is there are issues of department in regard to the implementation of the said Rules not only on behalf of the Petitioner but also on what was asserted by the department by the private Respondents, who are represented by Mr.Ravi Shetty, learned Senior Advocate. The MHADA appears to have moved the proposal with the State Government for amendment of Rule 5. However, before the amendment would be approved by the State Government, it appears that a provisional consolidated Seniority list in the cadre of Executive Engineer has been prepared, which according to the Petitioners is an objectionable exercise, as the same is undertaken without a specific approval being granted by the State Government.

5. The proposal by MHADA was submitted to the State Government on 13<sup>th</sup> October 2025, in pursuance of Authorities Resolution dated 18<sup>th</sup> September 2025. Be that as it may, there is a consensus between the Petitioners as well as the Private Respondents that it would be in the interest of both parties for the State Government to take an appropriate decision, in accordance with law, on the proposed amendment to Rule 5 as submitted by MHADA. Until such decision is taken, further exercise of promotion shall not be undertaken, as doing so may lead to further complications is the common concern.

6. Prima facie, from what has been contended at the bar appears to have substance. The Rule is required to be consistent with the well-settled principles of law applicable to promotions in a cadre which consists of both direct recruits and promotees, possessing degree and diploma qualifications. All these aspects would be required to be taken into consideration by the State Government, including obtaining expert opinion as to the correct legal position, so as to frame an

appropriate Rule that satisfies the test of law as laid down in the applicable decision of the Supreme Court. The endeavor of the State Government as also of the MHADA, would be that no litigation in this regard is generated by having any ambiguity, uncertainty and an unfair advantage to be created from any rule. Thus utmost care is required to be taken to take any appropriate decision in accordance with law.

7. In this view of the matter and considering the consensus between the parties we are of the opinion that this Petition needs to be disposed of, by directing the State Government in the appropriate department, to decide the proposal as received by the MHADA in regard to the Rule 5 of the said Rules.

8. Let the said decision be taken by the State Government within 6 weeks from date the copy of this order is made available to the Respondents.

9. All the contentions of the parties in respect of service rights, are expressly kept open.

10. Needless to observe that, after the State Government approves or otherwise decides on the matter, the same shall be duly notified by MHADA, and further action shall be taken strictly in accordance with law.

11. Disposed of in the aforesaid terms. No costs.

#### **WRIT PETITION (L) NO.24805 OF 2025**

1. Not on board. Taken on board.

2. In view of the aforesaid order Mr. Shetty, learned Senior Advocate for the Petitioner, has fairly stated that this Petition can also be disposed of in the aforesaid terms, however, keeping all contentions of the parties with a liberty to revive the Petition in the event decision of the State Government is not to amend the existing Rule 5 of the aforesaid rules.

4. The stand of the Petitioners is fair, we accordingly dispose of this Petition with liberty to revive the Petition, in such eventuality.

5. Disposed of in the aforesaid terms.

**(AARTI SATHE, J.)**

**(G. S. KULKARNI, J.)**