

**(2004) 02 BOM CK 0112**

**Bombay High Court (Aurangabad Bench)**

**Case No:** Writ Petition No's. 4778 and 5182 of 2003

Abdul Saleem Siddiqui

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision:** Feb. 17, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 16, 309
- Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 - Rule 4(2)
- Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 - Rule 5

**Citation:** (2004) 3 ALLMR 487 : (2005) 104 FLR 3 : (2004) 3 MhLj 450

**Hon'ble Judges:** V.G. Munshi, J; A.P. Deshpande, J

**Bench:** Division Bench

**Advocate:** Prashant Deshmukh, in W.P. No. 4778 of 2003 and V.D. Hon, holding for S.S. Manale, in W.P. No. 5182 of 2003, for the Appellant; A.V. Gondhalekar, Assistant Government Pleader for Respondent Nos. 1 and 3 and D.R. Irale Patil in W.P. Nos. 4778 and 5182 of 2003 and S.S. Kulkarni, for Intervenors for Respondent Nos. 4, 5 and 6 in W.P. No. 4778 of 2003, for the Respondent

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**Judgement**

A.P. Deshpande, J.

The writ petitioner in Writ Petition No. 4778/2003, so also, respondent Nos. 4 and 5 are in the employment of the Zilla Parishad, Aurangabad. The petitioners, so also, the respondent Nos. 4 and 5 came to be appointed in the post of "Assistant to Junior Engineer" in the year 1990. In the year 1990, in all 28 persons were selected for being appointed in the post of "Assistant to Junior Engineer", under order dated 1-3-1990. Under the said order dated 1-3-1990, 28 candidates were issued appointment orders and they were directed to resume the duties within a period of 7 days. Out of the said 28 candidates, only 18 persons joined the service and the said appointments were under "Jawahar Rojgar Yojana".

By passage of time, the posts under "Jawahar Rojgar Yojana, came to be abolished by the Government as the said scheme was wound up, consequent upon stoppage of release of grants by the Central Government. In the year 1999, the Government took a decision to absorb, such of the persons who were working under "Jawahar Rojgar Yojana", in the sanctioned posts on regular establishment/cadre strength of the Zilla Parishads. The eighteen persons who had joined employment pursuant to the orders of appointment dated 1-3-1990, came to be regularized in the regular establishment of Zilla Parishad, Aurangabad, on 7-11-2000.

In Writ Petition No. 4778/2003, two questions are raised : (i) What should be the criteria for determination of the inter se seniority of the said eighteen persons who were appointed under order dated 1-3-1990 and (ii) as to what is the eligibility criteria for the purpose of promotion from the post of Assistant to Junior Engineer to the promotional post of Junior Engineer. The second question is also germane and is required to be adjudicated in Writ Petition No. 5182/2003.

2. The petitioner in Writ Petition No. 4778/2003 has challenged the final seniority list dated 1-1-2002 prepared by the Additional Chief Executive Officer, Zilla Parishad, Aurangabad. In the said petition, three persons have moved applications for impleading them as party/respondents. The said applications are allowed by this Court and as a result, one Shri K. S. Bhosale and Shri D. M. Phulari are impleaded as party/respondents. The third applicant who moved an intervention application and prayed for impleading as party/respondent in the said petition, by name, Shri A. G. Shakhawar, who is at serial No. 29 in the seniority list, categorically states that he is not pressing the intervention and is not objecting to the placement of his name at serial No. 29 in the said seniority list. In this view of the matter, no adjudication is required to be made so far as the candidate at serial No. 29 in the seniority list is concerned, namely, Shri A. G. Shakhawar.

3. The candidates who came to be appointed in the post of Assistant to Junior Engineer under orders dated 1-3-1990 joined the said post of different dates, though within the period stipulated. The submission of the petitioner is that the inter se seniority amongst the appointees who were appointed under one order ought to be on the basis of date of actual joining of post; whereas the respondents contend that the same cannot be so and under the rules, they claim that the seniority has to be on the basis of the rank of respective candidates in order of preference as indicated in the order of appointment.

4. We take up the first issue for adjudication and for the reasons recorded hereinbelow, we have no hesitation to hold that the seniority does not depend upon the actual date of joining but would depend upon the rank of the candidate in order of preference as indicated in the appointment order dated 1-3-1990, as all the candidates were appointed under the same order. To substantiate our conclusion, we refer to the relevant rules.

It is not in dispute that for determination of seniority, Zilla Parishad has adopted Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, and the question of seniority is regulated under the said rules. The relevant rule for the purpose of adjudication of the disputed question is Rule 4. Rule 4 lays down the general principles for determination of seniority. The said general rules, of course, are subject to the other provisions of the rules. Sub-rule (1) of Rule 4 provides that subject to the other provision of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein. Sub-rule (2) of Rule 4 clinches the issue and the same reads thus:--

"Notwithstanding anything contained in Sub-rule (1) --(a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow;

(b).....

(c)....."

Reading of Sub-rule (2) of Rule 4 makes it clear that the said Sub-rule overrides all other provisions contained in Rule 4 for the reason that the said sub-rule begins with a non-obstante clause. Accordingly, the inter se seniority of direct recruits selected in one batch for appointment to any post, shall be determined according to their ranks in the order of preference arranged by the competent authority, and as revealed in the appointment order.


In the present case, perusal of the order dated 1-3-1990 issued by the competent authority viz. Chief Executive Officer of the Zilla Parishad reveals that the candidates were ranked in the order of preference and their names were arranged from serial No. 1 to serial No. 28. If this be so, person at serial No. 1 will be senior to the person at serial No. 2 and the same would be the position in regard to every candidate depending upon his rank in the order of preference.

5. In Writ Petition No. 4778/2003, the petitioner has made a grievance that as the respondent Nos. 5 and 6 though joined subsequently i.e. one or two days after the petitioner joined, they have been shown senior to the petitioner. The said grievance is devoid of substance and has to be rejected having regard to the provision contained in Rule 4, Sub-rule (2) of the Rules. In this view of the matter, so far as seniority of the petitioner vis-a-vis respondent Nos. 4 and 5 is concerned, we find that the final seniority list dated 1-1-2002 on page 56 of the petition, is correctly prepared. The respondent Nos. 4 and 5 have rightly been shown above the present

petitioner, as they were having better ranking in order of preference in the order of appointment. In the result, the contention of the petitioner, that the seniority ought to be reckoned on the basis of actual date of joining and not on the basis of ranking, requires to be rejected and it is accordingly rejected.

6. The next question which arises in both the petitions is what is the eligibility criteria for promotion of an "Assistant to Junior Engineer" to the post of junior Engineer and as to whether the present petitioners are eligible for being considered for promotion to the post of Junior Engineer.

The learned Counsel for the petitioner invited our attention to the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967. Rule 5 of the said rules provide for qualifications and method of appointments. Sub-rule (1) provides that subject to Sub-rule (2), the qualifications in respect of age, education, experience etc. required to be possessed by candidates for and methods of appointment to the posts in the District Services and posts thereunder shall be as specified in Appendices I to XIII. The eligibility criteria for the purposes of appointment in the post of Junior Engineer, either by way of nomination or promotion, is contained in Appendix VI. Turning to Appendix VI, the provision is contained in Item No. 2. The relevant portion reads thus :--

Sl. No.	Service and Cadre	Post	Qualifications for and methods of appointment.
(1)	(2)	(3)	(4)
2.	District Technical Service (Class III) (Engineering), Grade II.	(i) Junior Engineer,	1. Appointment shall be made either 

(a) by  
promotion  
from amongst  
suitable  
Assistant to  
Junior  
Engineers and  
maistries  
Grade I who  
have passed  
the  
Professional  
Examination  
for Overseers  
prescribed by  
the State  
Government ;

(b) by  
nomination  
from amongst  
candidates  
who

(i) unless  
already in the  
service of the  
Zilla Parishad  
are not more  
than 28 years  
of age, and

(ii) Possess a  
recognised  
degree or  
Diploma (three  
years course)  
in Civil.  
Mechanical or  
Electrical  
Engineering,  
as the case  
may be, or an  
equivalent  
qualification.

2. The ratio for  
appointment  
by promotion  
and  
nomination  
shall be 1 : 1 .

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The relevant portion of the rule with which we are concerned is covered by Clause 1 of Column 4, which lays down qualifications for and methods of appointment. An appointment in the post of Junior Engineer can be made by promotion from amongst suitable Assistant to Junior Engineers and maistries Grade I who have passed the Professional Examination for Overseers prescribed by the State Government and by nomination from amongst candidates who (i) unless already in service of the Zilla Parishad are not more than 28 years of age, and (ii) possess a recognised degree or Diploma (three years course) in Civil, Mechanical or Electrical Engineering, as the case may be, or an equivalent qualification. A further provision is made which lays down the ratio for appointment by promotion and nomination, and the ratio is fixed as 1 : 1.

7. The present petitioners undoubtedly possess a recognised Diploma of three years course in Civil Engineering. The petitioners' grievance is that they are not being considered for grant of promotion by Zilla Parishad for the reason that they have not passed the Professional Examination for Overseers prescribed by the State Government. The learned Counsel for the petitioner has pointed out that while making an appointment in the post of Junior Engineer by nomination, the required qualification is a recognised Degree or Diploma (three years course) in Civil, Mechanical or Electrical Engineering. The petitioners who are working as Assistant to Junior Engineer point out that, as a matter of fact, they possess qualification which is necessary and requisite for filling in the post of Junior Engineer by nomination, and as such, in their submission, insistence on the part of the Zilla Parishad/employer, that they further need to possess the qualification of having passed Professional Examination for Overseers prescribed by the State Government, is an uncalled for insistence. It is submitted that the rules will have to be harmoniously construed. The rules will have to be construed in a fashion that they do not result in absurdity or repugnancy.

In the submission of the petitioners, who are in service candidates, they have put in about 15 years of service and besides having this vast experience to their credit, they are also eligible and qualified for appointment to the post of Junior Engineer by nomination, then why should they not be treated as eligible for appointment to that post by promotion.

It is claimed that Clause (a) of the rule is not happily drafted and the intention of the rule makers will have to be found out by conjoint reading of the said clause with Clause (b) of the rule.

It is then very ably submitted that all sub-sections or rules are required to be read as a "part of an integral whole" which are interdependent each portion throwing light on the rest. The emphasis is on harmonious construction, with a view to avoid absurdity.

8. According to the petitioners, for an Assistant to Junior Engineer who does not possess the qualification of recognised Degree or Diploma of three years, for them alone, the requirement for passing of Professional Examination will have to be read.

On the other hand, the learned Advocate appearing for the respondents, and more particularly the Zilla Parishad, has vehemently contended that as the rule lays down that the Assistant to Junior Engineer, for promotion to the post of Junior Engineer, need to possess qualification of Professional Examination for Overseers prescribed by the State Government, there is no reason to interpret the rule with a view to exclude the said requirement. He submits that the language of the provision is plain and, as such, the provision has to be literally construed.

9. Having considered the respective contentions, let us first find out whether literal construction of the rule results in any absurdity or repugnancy. Plain reading of Clause (a) makes it clear that the requirement of passing Professional Examination for Overseers is provided for all candidates, irrespective of their possessing a Degree or Diploma of three years. This brings in an inconsistency, for the obvious reason that passing Degree or Diploma of three years is by itself sufficient qualification for appointment to the post of Junior Engineer by nomination. The qualifications for appointment by nomination is provided in Clause (b). To hold that a candidate can be appointed by nomination to the post of Junior Engineer, if he possesses Degree or Diploma of three years, and then to hold that for appointment to the said post by promotion a candidate is not qualified even though he holds the Degree or diploma of three years, besides experience of about 15 years of service in the next below cadre, is absurd. To avoid this absurdity, the rule is required to be harmoniously construed.

True it is, that all the sub-sections of a section or all the sub-rules of a Rule have to be read as a "part of the integral whole" to gather the intention of the legislation. The legislation could not have intended to prescribe higher requirement of qualification for promotees as against direct recruits, for the obvious reason that promotes have an added qualification to their credit, in the form of experience. If the rule is not harmoniously construed and if construed literally, the qualification required for promote candidates would be (1) Degree

or Diploma of three years plus (2) whatever experience they have to their credit plus (3) passing a Professional Examination for Overseers; whereas for a direct recruit

viz. for appointment by nomination, the qualification would be only a Degree or a Diploma. This to say the least would be unfair and unjust. It could never be intended by the legislation. If literally construed, the rule will be at variance with the legislative intent and object, leading to manifest absurdity and repugnancy. We are required to gather the legislative intent from the subject matter as a whole and the context in which Clause (a) and Clause (b) of the rule finds place. Examination of Clause (a) reveals that there is inadvertent omission and hence words need to be supplied, more so, as the omission is palpable. There is almost a necessity to add words in Clause (a) to give the rule a workable meaning.

10. We are of the clear view that the provision contained in Clause (a) requires to be construed harmoniously in consonance with the intention of the rule makers which is explicit in the language used in Clause (b). Clause (a) reads thus:--

"Appointment shall be made either --

(a) by promotion from amongst suitable Assistant to Junior Engineers and maistries Grade I who have passed the Professional Examination for Overseers prescribed by the State Government.

(b) ....."

It is obvious that the examination for overseers is an inferior qualification, as compared to possessing a recognised degree or diploma and a person possessing a degree or diploma could be presumed to possess the requisite knowledge which a candidate possesses by passing Professional Examination for Overseers. In this view of the matter, with a view to harmoniously construe Clause (a) and (b), we propose to read in Clause (a), the following words, so that Clause (a) could be read down to include and encompasses passing of the Professional Examination for overseers in regard to only such of the Assistant to Junior Engineers who have not passed the recognised degree or diploma (three years course) in Civil, Mechanical or Electrical Engineering, as the case may be. In our considered view, Clause (a) needs to be read thus:--

"Appointment shall be made either by promotion from amongst suitable Assistant to Junior Engineers and maistries Grade I who have passed the Professional Examination for Overseers prescribed by the State Government, or who possesses a recognised degree or Diploma (three years course) in Civil. Mechanical or Electrical Engineering, as the case may be, or an equivalent qualification."

We are reading the underlined portion in the rule.

If so read, the relevant rule would not result in absurdity and the legislative intent would be achieved.

If read in proper perspective, possessing Professional Examination for overseers prescribed by the State Government, would be no doubt, necessary qualification

only for those who do not possess a Degree or Diploma of three years. If so read, there would be no inconsistency and in this view of the matter, we conclude that the petitioners who possess recognised Diploma (three years course) in Civil Engineering and though they do not possess the Professional Examination for Overseers prescribed by the State Government, they are still eligible for being considered for appointment in the post of Junior Engineer by promotion.

11. Besides the said position in law, by an interim order dated 12-12-2003 this Court had permitted the petitioners to move the Commissioner under Rule 5, Sub-rule (2) of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967, for relaxation of prescribed qualification, assuming that the petitioners were not qualified. The Commissioner on being moved by the petitioners in that regard, vide communication dated 11-2-2004, has rightly held that the petitioners are eligible, by virtue of the fact that they possess three years Diploma. The Commissioner has rightly held that the petitioners were holding the requisite qualifications and, as such, there is no case for relaxation made out. The interpretation of the relevant rule by the Commissioner is in line with the view that we have taken.

12. In the result, Writ Petition No. 4778/2003 is partly allowed. Writ Petition No. 5182/2003 is allowed.

We declare that the petitioners in both the petitions are eligible and qualified for being considered for promotion to the post of Junior Engineer.

13. Rule made absolute in the above terms, with no order as to costs.