
Abdul Saleem Siddiqui Vs State of Maharashtra and Others

Writ Petition No"s. 4778 and 5182 of 2003

Court: Bombay High Court (Aurangabad Bench)

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

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 :--

Qualifications for and methods of

Sl. No. Service and Cadre Post

appointment.

(1) (2) (3) (4)

District Technical Service

(i) Junior 1. Appointment shall be made either

2. (Class III) (Engineering),

Engineer, $\tilde{A}^{\frac{1}{2}}$

Grade II.

(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 $\tilde{A}^{\frac{1}{2}}$

(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 .

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.