
(2015) 01 BOM CK 0293
In the Bombay High Court
Case No : Writ Petition No. 1117 of 1991

A.D. Khare and Others	Vs	APPELLANT
The Maharashtra State Electricity Board and Others		RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 01 BOM CK 0293

Hon'ble Judges : B.P. Dharmadhikari, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : S.P. Palshikar, for the Appellant; R.E. Moharir, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J—Heard Shri Palshikar, learned counsel for the petitioners, Shri Moharir, Advocate for respondent No. 1 and Shri Agnihotri, learned counsel for respondent Nos. 3, 5, 6, 9 & 16.

2. By this petition filed under Articles 226 & 227 of the Constitution of India, the petitioners (10 in number) question the order of promotion dated 25.02.1985 promoting Respondent Nos. 2 to 24 on the post of Assistant Superintendent. It is not in dispute that the petitioners in the meanwhile have also been promoted to that post. Some of them have thereafter superannuated. Most of the respondents have also been superannuated.

3. Shri Palshikar, learned counsel has placed reliance upon the Division Bench judgment of this Court in the case of Suresh Bhandekar and others Vs. Maharashtra State Electricity Board and others, (1989) 3 BomCR 420 : (1989) 91 BOMLR 679 : (1990) 1 LLJ 1 , to urge that the controversy is squarely covered by the law laid down therein. He added that relief as claimed in the petition can be given to the petitioners by sanctioning to them a deemed date without disturbing promotions given to the respondents. It is in this background that we

have considered the controversy.

4. The petitioners were working as Chargemen Grade I i.e. as Junior Engineers with the then Maharashtra State Electricity Board now known as Maharashtra State Power Generation Company. They were Graduates when employment was given to them. Respondent Nos. 2 to 24 were Diploma Holders and were recruited as Chargemen Grade II or Sub-Engineers. For the petitioners, the promotional channel is from Chargemen Grade I to Assistant Engineer/ Assistant Shift Engineer. The next promotional post is that of Deputy Executive Engineer and thereafter of Assistant Superintendent. The respondents first need to be promoted from the post held by them as Chargemen Grade II to Chargemen Grade I post and thereafter, the channel is common.

5. Shri Palshikar, learned counsel, after inviting attention of this Court to Division Bench judgment mentioned supra, points out that the employer approached the Hon'ble Apex Court in Special Leave Petition assailing it. The Special Leave Petition was not entertained but the Hon'ble Apex Court on 22.01.1990 clarified that if there were any grievance of those who were not parties before it, that grievance would not be covered by its order. Shri Palshikar, learned counsel, has invited our attention to the impugned order of promotion dated 25.02.1985 to submit that the respondents were promoted on purely temporary basis without prejudice to the seniority and claims of others, if any, and subject to outcome of Writ Petition No. 2255 of 1982. This Writ Petition No. 2255 of 1982 was decided on 13.03.1989 and that judgment is reported in Suresh s/o Baburao Bhandekar & Ors. vs. Maharashtra State Electricity Board & Ors., (supra). He submits that because of this stipulation, after the promotions which were assailed in Writ Petition No. 2255 of 1982 were found unsustainable, the order of promotion dated 25.02.1985 should have been automatically ignored and fresh promotion orders in accordance with, law as laid down by said Division Bench, should have been issued. That was not done. The petitioners, therefore, made a representation and as that representation was not considered, the present petition has been filed. He submits that the promotions given to respondent Nos. 2 to 29 are after relaxing the condition of experience and said relaxation is held misconceived and erroneous by the Division Bench. In this situation, the respondents cannot be treated as senior to the petitioners. He concludes his arguments by urging that as those respondents have been promoted on 25.02.1985, the present petitioners can also be given the post as Assistant Superintendent from the said date by placing them above the respondents. He points out that the Division Bench judgment noted supra did not find it necessary to disturb the promotional orders and directed the department to accommodate the petitioners before it by creating supernumerary posts, if necessary.

6. We have heard Shri Moharir, learned counsel for respondent No. 1 and Shri Agnihotri, learned counsel for respondent Nos. 3, 5, 6, 9 & 16. They submit that the petitioners should have approached this Court within reasonable time after the orders of promotions dated 25.02.1985. The petition filed on 11.04.1991 is

more than six years after said date and therefore, for stale cause. It is further pointed out that order of promotion was subject to adjudication in Writ Petition No. 2255 of 1982 and the present petitioners were not party to that petition, as such, they ought to have approached the Court if they were aggrieved by this order. By not approaching this Court and by suffering the impugned promotion order for more than six years, they have acquiesced in it and were estopped from questioning it. It is further pointed out that the employer has circulated two seniority lists in the meanwhile. A seniority list of Chargemen Grade I for the period from 31.03.1978 to 31.03.1982 was circulated on 12.04.1983 and in it the respondents were shown senior to the petitioners. The second such seniority list for the post of Assistant Shift Engineers was circulated on 07.12.1983. The petitioners were placed below the respondents in both the seniority lists and they never objected to the same. It is further contended that though in later seniority list the respondents at Sr. No. 21 onwards were shown juniors to the petitioners, they were promoted to the post of Deputy Executive Engineer (Generation) against the reserved category post i.e. post reserved for backward class community. As such, the contention that the petitioners were seniors to those respondents, is not very relevant.

7. It is also pointed out that Respondent No. 1 - employer faced peculiar situation in 1982 and it was required to appoint by promotion ASE (AE) in large numbers. The promotions were to be made from next below cadre which consisted of degree holders as also diploma holders. Sufficient number of candidates having requisite years of experience were not available. The degree holders had not completed minimum three years of service and diploma holders had not completed minimum six years of service. Therefore, the Selection Committee in its meeting held on 09.10.1980, decided to relax the condition of experience in favour of 37 degree holders and 65 diploma holders while recommending their names for promotion to the post of ASE i.e. AE. This Committee in its meeting held on 19.01.1992 and 22.01.1982 decided to relax the condition of experience in favour of 87 degree holders and 81 diploma holders while recommending their names for promotion to the post of ASE (AE). Accordingly, promotion orders were issued. It is further urged that the petitioner Nos. 6, 7, 8 & 10 got benefit of this relaxation and as such, they cannot challenge the similar benefit given to the respondents. Shri Moharir, learned counsel submits that this need which arose in 1982 and power contained in Regulation to relax the requirement was not looked into by the Division Bench while passing the earlier order.

8. Shri Agnihotri, learned counsel submits that the Hon''ble Apex Court has expressly clarified that the order passed by this Court and reported supra cannot come in the way of present Respondent Nos. 2 to 29 while defending their promotions. He also invites attention to submissions made in para 2 to point out that Respondent Nos. 3, 5, 6, 9 & 16 were given 01.02.1978 as deemed date in the cadre of Chargemen Grade I while the petitioners joined service in that cadre subsequently i.e. in October 1978. He also invites attention to Seniority

Regulation framed in 1961 particularly Regulation No. 5(1) to urge that the departmental candidates are required to be placed before direct recruits (Graduate Engineers) in the post of Chargemen Grade I. This regulation and position was not required to be considered by the Division Bench of this Court earlier. He further submits that Respondent No. 3 has acquired qualification of AMIE (Engineering) which is equivalent to Graduate in Engineering and he joined services as Chargemen Grade I in 1977 along with degree holders. He also invites attention to para 13 of the reply affidavit filed on behalf of Respondent No. 1 - employer to point out need of experience. He submits that after these replies came on record, there are no counter affidavits and as such, the assertions therein have remained undisputed.

9. In brief reply, Shri Palshikar, learned counsel has invited attention to the consideration of aspect of relaxation by earlier Division Bench in paras 16 to 18. He submits that power to relax is to be used sparingly and in exceptional cases. Therefore, as held by the Division Bench, it has to be case specific i.e. case of each employee should be examined to find out need and his eligibility for exemption.

10. We find it proper to note the controversy which has been considered by the Division Bench of this Court in the reported judgment. There, the respondents were promoted to the post of Assistant Shift Engineer like the petitioners before the Court. Thereafter by order dated 09.02.1982, the said respondents were further permitted to officiate in the post of Assistant Engineer. This order was questioned before the High Court. The Division Bench has looked into Regulation No. 21 which authorizes Selection Committee to relax the age limit and educational or other qualifications. It has also considered Note No. 2 below Regulation No. 38 which constitutes Chairman as Competent Authority to relax on such recommendations by the competent Staff Selection panel. The Division Bench has found that the power of relaxation was exercised in the facts before it mechanically without any application of mind. It found that Regulation No. 21 empowers Selection Committee to recommend selection of candidates after due application of its mind and not in routine or mechanical manner. The relaxation of qualification was held to be an exception and for that candidate should also have exceptionally high educational qualifications but lacking in experience. The Division Bench found that if the power is allowed to be exercised routinely, rule prescribing minimum experience would be rendered redundant. Therefore, while setting aside the order of promotion dated 09.02.1982, the Division Bench observed that as the petitioners were later on promoted to the post of Assistant Superintendent and deficiency of experience in case of respondents was already fulfilled/ regularized, it was not necessary to disturb the promotions already made and it proceeded to give deemed date of promotion to the petitioners. Thus, 09.02.1982 was given to them as deemed date. The Hon'ble Apex Court on 22.01.1990 has refused to entertain Special Leave Petition (SLP) but made it clear that "if there is any grievance of those who are not party here, the same shall not be covered by our order". These observations or clarification by the

Hon"ble Apex Court, therefore, makes it clear that the judgment delivered by the Division Bench cannot be applied of its own in present matter.

11. The employer before this Court has pointed out that the seniority list for the cadre of Chargemen Grade I for the period from 31.03.1978 to 31.03.1982 was circulated by it on 12.04.1983. It was a provisional seniority list. In that seniority list, Respondent Nos. 2 to 24 were shown between items 141 to 440 except respondent Nos. 23 and 24, who joined later. The petitioners were shown in that seniority list at Sr. No. 460 and thereafter. Petitioner Nos. 7, 8 and 10 were shown at Sr. Nos. 353, 330 and 339. In the seniority list of Assistant Shift Engineer as on 31.03.1981 which was circulated on 30.09.1983, the petitioners were shown below respondent Nos. 2 to 20. The respondents at Sr. Nos. 21 to 24 though shown junior to the petitioners in that list, they were promoted as Deputy Executive Engineers (Generation) against the reserved posts. Thus, these lists were circulated long before the impugned promotions and the petitioners never objected to it.

12. The impugned promotion order dated 25.02.1985 no doubt is purely temporary and without prejudice to seniority and claims of others as also subject to outcome of Writ Petition No. 2255 of 1982. But then, pendency of writ petition appears to be the only cause for showing it to be temporary. It cannot be ignored that benefit of writ petition could not have been speculated on 25.02.1985 i.e. on the date of impugned promotion order. Thus, the petitioners could not have relied upon pending writ petition only, for not making any grievance. This writ petition was dismissed on 13.03.1989, SLP against it was also disposed of on 22.01.1990. Petitioner No. 2 thereafter has made representation which is in his individual capacity. Though that representation is undated, from the events mentioned in that representation, it is apparent that it was after the Hon"ble Apex Court upheld the judgment of the High Court. Therefore, this representation is after 22.01.1990. The other petitioners are not parties to this representation. The language employed therein is also singular, therefore, it cannot enure to the benefit of other petitioners. The petitioners have not placed on record any document to show that they had disputed or objected to promotion orders dated 25.02.1985. Only after final adjudication by the Hon"ble Apex Court on 22.01.1990, it appears that the petitioners came together and filed present petition on 11.04.1991. Thus, the petitioners would not have filed any petition, had the petition been dismissed or the Hon"ble Apex Court entertained the SLP and reversed the order of High Court. The petitioners have, therefore, taken a chance and only after getting certain about adjudication, chose to approach this Court. Their conduct itself shows that they, therefore, acquiesced in impugned promotions and chose to challenge it only after final verdict of the Hon"ble Apex Court. The fact that the respondents were shown seniors in two earlier seniority lists, is not in dispute. Some of the petitioners got benefit of relaxation is also not in dispute. Respondent Nos. 3, 5, 6, 9 & 16 have pointed out that in terms of Regulation No. 5(1) of the Seniority Regulations, they needed to be placed above direct recruits and this position is also not in

dispute. The relaxation made by the respondents on two occasions is also not seriously in dispute. The relaxation made was for 37 degree holders and 65 diploma holders on one occasion and thereafter for 87 degree holders and 81 diploma holders on second occasion.

13. In the circumstances, taking overall view of the matter, we find it not proper to intervene in the matter after six years of promotion order and in any case today i.e. after 23 years of filing of writ petition. The promotion order has been issued on 25.02.1985 i.e. almost 30 years back. Accordingly, we dismiss the present petition. Rule discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.