
(2014) 10 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 3633/2004

Dattatraya

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 1 BomCR 366 : (2015) 1 LLN 91

Hon'ble Judges : C.V. Bhadang, J

Bench : Single Bench

Advocate : Prashant Gode, Advocate for the Appellant; A.D. Sonak, AGP,
Advocate for the Respondent

Judgement

C.V. Bhadang, J.—The petitioners were appointed as Agriculture Supervisors/ Extension Officers (Agriculture) in Zilla Parishad, Chandrapur some time in the year 1970-71 except petitioner no. 8, who was appointed in the year 1975. Petitioner nos. 1 to 7 were promoted as Agriculture Officers on the following dates.

2. Petitioner no. 8 was not promoted purportedly on account of some departmental proceedings against him. According to the petitioners, the next promotional post is in the Maharashtra Development Services Class -II (Gazetted) (M.D.S. Class II for short). Upon being promoted in the said service, the petitioners were entitled to be posted as Block Development Officers, which is a gazetted post. The said promotion, according to the petitioners, could be granted to the employees holding the post in any of the eight services as set out in Paragraph no. 3 of the petition, which includes District Technical Service (Class -III) (Agriculture), to which the petitioners belonged. As per communication dated 20.6.1979 (Annexure -E) the Assistant Secretary in the Rural Development Department had asked all Chief Executive Officers of the Zilla Parishads to prepare a seniority list of the Zilla Parishad employees for appointment by selection to the Class -II post in the M.D.S. The said communication sets out in

all six services from which such promotion can be given, which again includes the District Technical Service (Class -III) (Agriculture) (D.T.S. for short) to which the petitioners belonged. The communication contemplated option being communicated by the concerned employees through the Chief Executive Officer of Zilla Parishad relinquishing his claim, if any, being considered for appointment by selection to Class -II post in "another such service". This was in pursuance to Rule 9 (b) of the Maharashtra Development Service (Constitution, Classification and Recruitment) Rules, 1973 (Rules of 1973 for short) as amended w.e.f. 1.4.1979. The said options were to be given by 14.8.1979. The Chief Executive Officers of the Zilla Parishads were then supposed to furnish the information to the Divisional Commissioners concerned not later than 18.7.1979. It is undisputed that the petitioners had given options on 11.8.1979.

3. Respondent nos. 4 to 16 were appointed directly by nomination to the District Technical Service (Class III), after 14.8.1979 and as such these respondents could not have given any option prior to 14.8.1979 as required by the communication at Annexure -E. Their options were called subsequently by concerned C.E.O. of the Zilla Parishad. The contention of the petitioners is that the Divisional Commissioner, in his own discretion, could not have allowed the change of the said date, as set out by the State Government. However, the seniority list dated 1.1.1998 came to be sent by the Agriculture Development Officer of Zilla Parishad, Chandrapur directly to the Divisional Commissioner, Nagpur without the knowledge or concurrence of the Chief Executive Officer, Zilla Parishad, Chandrapur. It is contended that the Divisional Commissioner without application of mind accepted the same. In the said seniority list, respondent nos. 4 to 16 have been included and shown seniors, although they were not eligible to be considered as having not furnished the required option prior to 14.8.1979.

4. Respondent no. 2 Divisional Commissioner passed two orders, namely, 13.2.2001 and 27.12.2002 promoting respondent nos. 4 to 16 to the post of Block Development Officer by which the petitioners are aggrieved. The petitioners sent representations to respondent no. 2 Commissioner, which have not been decided.

5. It appears that the petitioners approached the Maharashtra Administrative Tribunal (MAT) under Section 19 of the Maharashtra Administrative Tribunal Act, 1985. However, the same matter was withdrawn on 30.1.2004 as according to the petitioners, the Tribunal was of the opinion that the petitioners not being employees of the State, the application was not maintainable. It is thereafter that this petition is filed challenging the impugned order dated 13.2.2001 and 27.12.2002 (Annexure -A) promoting respondent nos. 4 to 6 to the Maharashtra Development Services Class -II, which according to the petitioners, is violative of Article 14 of the Constitution of India.

6. Respondent no. 2 has filed a return. It is contended that appointment by Selection to the post of Block Development Officer/Child Development Project Officer/Assistant Project Officer and M.D.S. Class -II is made from suitable

employees in District Technical Class -III or District Service Class -III. It includes seven cadres for which reservation for promotion in percentage of post is fixed and agriculture cadre is one of these seven cadres. It is contended that Rule 6 (7) of the Rules of 1973, as amended, provides that employee from D.T.S. Grade -I shall get precedence over an employee working in D.T.S. Grade -II. It is next contended that when the options were called from the eligible employees which were to be furnished on or before 14.8.1979, except petitioner no. 2 Shri Thawale, none of the petitioners were in Grade -I of respective D.T.S. of the Zilla Parishads and were far below in Grade -II and as such were not in zone of consideration of promotion to M.D.S. Class -II. It is, thus, contended that 14.8.1979 was not the cut off date for giving options for all employees. It was the cut off date for eligible employees who were in service at that time. It is contended that respondent no. 2 Commissioner had prepared a tentative inter se seniority list of eligible employees as on 1.4.1989 on considering the options given by the eligible employees up to 14.8.1979.

7. It is then contended that the Maharashtra Zilla Parishad District Service (Recruitment) Rules, 1967 (Rules of 1967 for short) provides for direct recruitment to the post of Agriculture Officer in Grade -I of D.T.S. (Agriculture). Such recruitment was done by many Zilla Parishads after the year 1979. In short, it is contended that respondent nos. 4 to 16 were directly recruited as Agriculture Officers and fell in Grade -I of D.T.S. (Agriculture). This was after 14.8.1979 and as such there was no question of these respondents having furnished options prior to the said date. It is contended that at the relevant time the petitioners were in Grade -II of D.T.S. (Agriculture). It is contended that the Rules of 1973 as amended on 7.6.1984 and 27.9.1990 prescribe percentage of reservation to various District Services. As regards the petitioners' contention that although Shri P.M. Shende was working as Extension Officer (P) he was promoted in M.D.S. Class -II, whereas petitioner no. 8 who was senior to Shri Shende was not promoted, it is contended that Shri Shende was employee of D.T.S. (Executive and Village Extension) (Class -III) (Agriculture) to which petitioner no. 8 belongs only, 20% posts in M.D.S. are reserved. Shri Shende belonged to Scheduled Caste Category. He belonged to D.T.S. (Executive and Village Extension) Class -III for which 40% posts in M.D.S. Class -II were reserved. Thus, having greater percentage of reservation, he was promoted first in comparison to petitioner no. 8. It is contended that thus there is no violation of any Rule while preparing the seniority list. Respondent no. 3 has filed a return. It is contended that the said respondent i.e. C.E.O., Zilla Parishad is concerned only with respondent nos. 7, 8 and 16 were appointed as Agriculture Officers under D.T.S. Grade -I (Agriculture) after 14.8.1979 and as such have rightly been shown to be senior to the petitioners.

8. Respondent nos. 4, 5, 7, 8, 10, 12, 13, 14 and 15 have also filed their submissions, opposing the petition.

9. We have heard Shri Gode the learned Counsel for the petitioners and Shri

Sonak, learned Assistant Government Pleader, for respondent nos. 1 and 2 State. None for the other respondents.

10. It is submitted by the learned Counsel for the petitioners that respondent no. 2 could not have unilaterally allowed the change of the cut off date, namely, 14.8.1979 before which options were called for. He submitted that respondent nos. 4 to 16 having been appointed subsequent to 14.8.1979, could not have been considered for the promotion to M.D.S. Class -II as Block Development Officers, or equivalent posts. It is submitted that the seniority lists drawn by respondent no. 2 on 13.2.2001 and 27.12.2002 thus need to be quashed and set aside.

11. Insofar as petitioner no. 8 is concerned, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Jagan Narain...Versus...Food Corporation of India and others, reported in (2010) 4 Supreme Court Cases 558 in order to submit that pendency of minor penalty proceedings cannot come in the way of the employee being considered for promotion or being promoted. It is, thus, submitted that petitioner no. 8 could not have been denied the promotion on account of pendency of some departmental proceedings.

12. The learned Assistant Government Pleader has supported the impugned orders. It is submitted that respondent nos. 4 to 16 having been directly recruited to D.T.S. (Agriculture) Grade -I as Agriculture Officers were senior to the petitioners, who fell in D.T.S., Grade -II (Agriculture). The petitioners were promoted as Agriculture Officers subsequently. It is submitted that communication dated 20.6.1979 contemplated calling of options from eligible employees and this was in terms of Rule 9 (a) of 1973 Rules, as amended. It is submitted that a tentative seniority list was drawn by respondent no. 2 on 1.1.1998. It is pointed out that the submission of the petitioner that respondent nos. 4 to 16 cannot rank senior to them is obviously incorrect.

13. Insofar as petitioner no. 8 is concerned, the learned Assistant Government Pleader has submitted that he has rightly not been promoted on account of pendency of the departmental proceedings.

14. We have considered the rival circumstances and submissions made. It is not in dispute that the post of Agriculture Supervisor/Extension Officer (Agriculture) falls in Grade -II of D.T.S. (Class -III) while the post of Agriculture Officer falls in Grade -I of D.T.S. (Class -III). It is further undisputed that Rules of 1967 also provide for direct recruitment to the post of Agriculture Officer in Grade -I of D.T.S. (Agriculture). When the petitioners had given options, they were working as Extension Officers (Agriculture)/Agriculture Supervisors (except petitioner no. 2 Shri Thawale) and thus fell in Grade -II D.T.S. (Agriculture). It would be apparent that petitioner no. 2 was promoted in 1983. While petitioner nos. 1 and 3 were promoted in the year 1991, petitioner nos. 4, 5 and 6 were promoted in the year 1993 while petitioner no. 7 was promoted in the year 1998 i.e. much after 14.8.1979. Respondent nos. 4 to 16 were directly recruited as Agriculture

Officers and thus they fell in Grade -I D.T.S. (Agriculture). Rule 6 (7) of the Rules of 1973 stipulates a preference for making appointment by selection to M.D.S. Class -II on the basis of higher grade. The communication dated 20.6.1979 itself mentions that while making appointment by selection to M.D.S. Class -II, employees working in Grade -I are to be considered first over those working in Grade -II. It also stipulates that in respect of D.T.S. Class -III and District Service Class -III where Grades have been abolished w.e.f. 1.4.1979 preference for selection is to be given on the basis of seniority in that service. Be that as it may, having regard to the fact that respondent nos. 4 to 16 were directly recruited as Agriculture Officers in Grade -I D.T.S. (Agriculture) to which the petitioners were promoted subsequently (except petitioner no. 2 Shri Thawale), no exception can be taken to respondent nos. 4 to 16 being treated senior to these petitioners and respondent nos. 4 to 16 getting precedence while appointment by selection to M.D.S. Class -II. Insofar as petitioner no. 2 is concerned, there is greater percentage i.e. 40% posts being reserved for the incumbents belonging to D.T.S. (Executive and Village Extension) Class -III as compared to 20% reservation for the service to which petitioner no. 2 belonged, namely D.T.S. (Class -III) (Agriculture). Furthermore, the preparation/updation of list for selection to M.D.S. (Class -II) is an ongoing process, and cannot be invalidated on account of the options being called after 14.8.1979, in the peculiar facts of the present case. Thus, we find that the challenge raised by the petitioners to the impugned seniority list (Annexure -A) is devoid of any merit.

15. Insofar as petitioner no. 8 is concerned, the petitioner was denied promotion on account of some departmental enquiry being pending against him. In the case of Jagan Narain (Supra) the petitioner was denied promotion on account of a minor penalty of token recovery of Rs. 5,000/- being imposed on him. It appears that petitioner therein had relied upon two circulars of the respondent Food Corporation of India dated 13.12.2001 and 19.12.2001 clarifying that in respect of employees against whom recoveries have been ordered under minor penalty, such recoveries can continue even in promoted capacity, and therefore, there was no point to withhold such promotions. A perusal of para no. 8 of the judgment of the Hon'ble Supreme Court, would clearly show that in view of these two circulars and the fact that there was minor penalty imposed of token recovery of Rs. 5,000/- it was held that the same would not come in the way of employee being considered for promotion.

16. We, therefore, find that the facts in the present case in the absence of any such policy decision/circulars being brought to our notice, are clearly distinguishable, particularly when it is not shown that petitioner no. 8 was facing such departmental proceeding in respect of any such minor misconduct or the punishment imposed being of minor nature. In that view of the matter, the submissions, in this regard cannot be accepted.

17. For the reasons aforesaid, the writ petition is hereby dismissed. Rule is discharged with no order as to costs.