(1988) 12 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 1412 of 1988

Madhukar Kalmegh and others APPELLANT

Vs

Zilla Parishad, Amravati and others RESPONDENT

Date of Decision : 21-12-1988

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30

Citation : (1988) 12 BOM CK 0006

Hon'ble Judges : H.W. Dhabe, J;G.G. Loney, J

Bench : Division Bench

Advocate : Pradeep Mahalle, for the Appellant; N.S. Munshi Respondent No. 1 and R.S. Sundaram, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—This is a writ petition in which the common ground of challenge of the Petitioners is that having been already promoted to the posts of Head Accountants/Divisional Accountants, they were not in their lower posts of Deputy Accountant for whom as per the scheme framed under the Government Resolution dated 25th June, 1986, the Maharashtra Zilla Parishad, Finance and Accounts Service, Class III Examination is provided for promotion to the post of Head Accountant/Divisional Accountant which is a post in the District Service (Class III) (Accounts Grade I of the Zilla Parishad.

2. Briefly the facts are that the Petitioners were originally appointed in the posts of Deputy Accountant in Zilla Parishad, Amravati, after having passed the requisite examination prescribed for the said post. It may be seen that the post of Deputy Accountant is borne upon the cadre of District Services (Class III) (Accounts) Grade II. It may also be seen that the recruitment in the Zilla Parishads is governed by the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 (for short ''the Recruitment Rules'') framed by the State Government in exercise of the powers conferred upon it u/s 274 of the

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (for short the ''Act''). The expression ''District Service'' is defined in Section 2(iv) of the Recruitment Rules. As per the definition, it means a District Technical Service (Class TIT) or a District Service (Class III) of the Zilla Parishad constituted under the Act. Rule 5 provides that the qualifications and method of appointment shall be as specified in Appendices I to XIII of the Recruitment Rules.

3. It is the case of the Petitioners that they were promoted as Head Accountants (Grade I) as per the order dated 16-2-1984. which is incorporated in the petition as Annexure III. It is further their case that in the posts of Head Accountant, they were senior to the Respondents 2 and 3, who were promoted to the posts of Head Accountant on 27-9-1984 and 2-2-1985 respectively. It is riot in dispute that before any of these promotions were made, the promotees had not passed the Maharashtra Finance and Accounts Services Class III Competitive Examination or any other equivalent examination. It is further the case of the Petitioners that prior to the Government Resolution dated 25th June 1986. no such rules for holding the aforesaid examination were framed and therefore, their promotions were made without they being required to, pass the said examination. Thus, it is the case of the Petitioners that for the first time such an examination was introduced under Government Resolution dated 25th June, 1986. referred to above, for promotion to the post of Head Accountant from the next below post of Deputy Accountant.

4. A grievance of the Petitioners in the instant writ petition is that they are required to appear for the examination to be held in accordance with the aforesaid Government Resolution dated 25th June 1986 and if they do not appear or if they fail in the said examination, they will be reverted or at any rate are likely to lose their seniority because in view of the exemption granted under the aforesaid Government Resolution dated 25th June, 1986 the Respondents 2 and 3 who are junior to them and who are exempted from appearing for the said examination, would become senior to them in the post of Head Accountant. The names of the Head Accountants/Divisional Accountants, who are exempted from passing the examination as per the aforesaid Government Resolution dated 25th June 1986 are contained in the order of the Divisional Commissioner, Amravati dated 20-11-1987 (see Annexure-IV). It may be seen at this stage that the Petitioner No. 3 has crossed the age of 45 and is exempted from appearing at the said examination and thus his challenge for appearing at the examination is only on principle and is really academic for him. However, the Petitioners 1 and 2 are really aggrieved because they are required to appear for the aforesaid examination in question as per the Government Resolution dated 25-6-1986 and their seniority in the posts of Head Accountants/Divisional Accountants is also sought to be affected by the exemptions granted to some of the Head Accountants/Divisional Accountants by the Divisional Commissioner.

5. It may then be seen that in view of the exemption granted to the Head Accountants who had crossed the age of 45 from appearing in the above

departmental examination, the Petitioner No. 1 was treated as junior to them and was reverted which action he challenged before the Industrial. Court as well as the Commissioner, Amravati Davison, Amravati. He challenged in the , aforesaid cases the applicability of the Government Resolution dated 25-6-1986 about the examination to the persons like him who were promoted to the post of Head Accountant as well as the exemption granted to the Head Accountants from passing the examination prescribed under the Government Resolution dated 25th June 1986 on the basis of their crossing the age of 45 on the ground that the said rule relating to the examination is not applicable to the Head Accountant and, therefore, there is no question of granting any exemption to them. Before the Industrial Court, he filed a complaint case under Sections 28 and 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and obtained an interim relief of the stay of his reversion. Before the Divisional Commissioner, Amravati, he preferred an application under Rule 14(1)(c) of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. The Divisional Commissioner, Amravati Division, Amravati rejected these grounds by his order dated 7-4-1988. He however, directed by his aforesaid order that the seniority list of the Head Accountants should not be altered on the basis of the exemption granted to some of the Head Accountants on the basis of becoming 45 years of age until four examinations have been held w.e.f. the date of the introduction of the scheme of the examination as per the aforesaid Government Resolution dated 25-6-1986.

6. Since the principal grounds raised by the Petitioners are rejected by the Divisional Commissioner, Amravati, the Petitioners have challenged the order dated 20-11-1987 granting exemption (Annexure IV) as well as the order dated 7-4-1988 (Annexure VI) passed by him. The Petitioners have thus claimed the relief that the departmental examinations introduced under the Government Resolution dated 25-6-1986 (Annexure II) is not applicable to those who were holding the posts of Head Accountants and consequently there is no question of application of the clause of exemption from appearing at the said examination to them. The Petitioners have also claimed the relief that in the event of reversion from the post of Head Accountant, the seniority list (Annexure I) should be followed. Since the Departmental Examination in question was to be held from 25-10-1988, we tried to hear the instant writ petition expeditiously. However, since the material documents were to be filed by both the parties and more particularly the Zilla Parishad, Amravati the hearing of the writ petition was required to be adjourned and could not be completed before the completion of the said examination.

7. The learned Counsel for the Petitioners has principally urged before us that since the Petitioners are already promoted in clear and vacant posts of the Head Accountants/Divisional Accountants as per the order dated 16-2-1984 issued by the Chief Executive Officer. Zilla Parishad, Amravati. the condition of passing the Maharashtra Finance and Accounts Service Class III Examination which is prescribed under the Government Resolution dated 25th June 1986 by the State

Government for promotion of the Deputy Accountants in the District Services (Class III) (Accounts) Grade II is not applicable to them. In order to show that the appointments of the Petitioners are in clear and vacant posts, the learned Counsel for the Petitioners has drawn our attention to the appointment order dated 16th May 1984. It may be seen that in the appointment order dated 16th May 1984 although it is stated that the appointments of the Petitioners are in the vacant posts, it is also stated therein that their appointments by promotions are purely temporary and subject to the confirmation by the Selection Board.

8. In support of the submission that the appointments of the Petitioners to the posts of Head Accountants/Divisional Accountants stand regularised, heavy reliance is placed on behalf of the Petitioners upon the circular of the Government dated 4th. February 1988. It is also pointed out that as per Rule 3(a) of the Maharashtra Zilla Parishads District Services Recruitment (Without Consulting Selection Boards) Rules, 1983, consultation with Selection Board is not necessary if the appointment is made by way of promotion. For that purpose, reliance is also placed upon the aforesaid Circular of the Government dated 4-2-1988.

9. As regards the condition of applicability of passing the Maharashtra Zilla Parishad, Finance and Accounts Service, Class III Examination or any other equivalent examination as prescribed in Appendix XI (see Sr. No. 1) for promotion to the post of Head Accountants /Divisional Accountants from the post of Deputy Accountants, the submission is that the said condition is not applicable to the Zilla Parishad employees in view of the provisions of Rule 4-b of the Maharashtra Finance and Accounts Service Class III. Competitive Examination Rules, 1987 framed by the Government under its Resolution dated 9-11-1987. It is also contended that since two years have elapsed after the date of the appointments of the Petitioners in the posts of Head Accountants/Divisional Accountants during which no departmental examination was provided by the State Government for the Zilla Parishad employees, the proviso to the aforesaid rule in appendix XI relieves the Petitioners from appearing at the departmental examination for being treated as regular employees occupying their posts in substantive capacity. The contention that the Petitioners are holding their posts substantively is also based upon the definition of the expression "temporary post" given in Rule 9(56) of the Bombay Civil Service Rules (for short "BCSR") and in particular the note given thereunder.

10. In appreciating the above contentions raised on behalf of the Petitioners, it is necessary to examine some of the provisions of the Recruitment Rules framed by the State Government for appointment to the District Service Class III of the Zilla Parishads. Rule 5 of the Recruitment Rules as pointed out above lays down that the qualifications and the method of appointment shall be as specified in appendices I to XIII of the Recruitment Rules. Appendix XI contains the qualifications of candidates for and the method of appointment to the posts which are included in the District Service (Class III) (Accounts). We are

concerned in this writ petition with the District Service (Class III) (Accounts) Grade I which includes the post of Head Accountant/Divisional Accountant. The qualifications for and the method of appointments to these posts are as follows:

Appointment shall be made by promotion of Deputy Accountants who have worked in District Service (Class III) (Accounts) Grade II for a continuous period of not less than two years and have passed the Maharashtra Finance and Accounts Service Class III Examination or any other equivalent examination:

Provided that if there be no person who has passed the said examination, promotion may be made from amongst those who have passed the Deputy Accountant''s or an equivalent examination on the condition that he shall pass the said examination within two years from the date of his promotion or from the date he is held eligible for appearing in the said examination, whichever is later, failing which he shall be liable to be reverted to the lower post.

11. It is clear from the above rule contained in Appendix XI that the appointment to the post of Head Accountant/Divisional Accountant is by promotion of Deputy Accountants who have worked in the District Service (Class III) (Accounts) Grade II for a continuous period of not less than 2 years if they have passed the Maharashtra Finance and Accounts Service Class III Examination or any other equivalent examination. The proviso to the said rule enables promotion of a Deputy Accountant even if he has not passed the above examination if there is nobody amongst the Deputy Accountants who have passed the above examination. It is however necessary for his promotion that he should have passed the Deputy Accountant''s or an equivalent examination. After promotion, such a promotee is required by the proviso to pass the aforesaid examination within two years from the date of his promotion or from the date he is held eligible for appearing in the said examination. failing which he is liable to be reverted to his lower post. Before considering the submissions made on behalf of the Petitioners upon the above proviso, we may refer to the other relevant Recruitment Rules.

12. Sub-rule (4) of Rule 6 of the Recruitment Rules provides that ''where an appointment to a post in a District Service is to be made by promotion, selection shall be made on the basis of seniority-cum-merit. The most important provision is of sub-rule (6) of Rule 6 which provides that no person shall be confirmed in a post in a District Service unless he has satisfactorily put in service for a continuous period of not less than one year in that post or completes the period of his probation satisfactorily and has passed the Departmental and/or Language Examination, if any, and/or has successfully undergone training, if any. laid down by Government for the holders of such posts. Rule 6 emphasises that the candidates appointed or selected for appointment to the posts in the District Services in accordance with the provisions of these rules shall be required to pass such Departmental and Language Examination and/or tests as may be prescribed by the Government in that behalf. It however, provided that such candidates shall be eligible for exemption from passing any of these

examinations according to the prescribed rules.

13. It is clear from Sub-rule (6) of Rule 6 read with Rule 8 of the Recruitment Rules that it is obligatory upon the employee of the Zilla Parishad to pass the departmental examination before he can be confirmed in the post in District Service (Class III). As regards the submission on behalf of the Petitioners based upon the proviso to the rule contained in Appendix XI of the Recruitment Rules regarding promotion to the post of Head Accountant/Divisional Accountant, it may be seen that the said proviso only enables the Competent Authority to make promotion to the post of Head Accountant/Divisional Accountant if there is no candidate available who has passed the Maharashtra Finance and Accounts Service Class (III) or any equivalent examination. However, such a promotion can be given on the condition that the promotee should pass the prescribed examination for promotion to the post of Head Accountant/Divisional Accountant within 2 years from the date of his promotion or from the date when he is held eligible for appearing in the said examination.

14. It is submitted on behalf of the Petitioners that since the Maharashtra Finance and Accounts Service Class HI Examination referred to in Appendix XI and which is prescribed for promotion of the Government servants was not made available to the Zilla Parishad employees and since no other equivalent examination was prescribed until the Government Resolution dated 25-6-1986 was issued in that regard, it was not possible for the Petitioners to pass the said examination within two years from the date of their promotions. Similarly it is submitted that since the Petitioners had already passed the Deputy Accountant''s or equivalent examination before their promotions to the post of Head Accountant/Divisional Accountant, they were eligible for appearing in the examination prescribed for promotion to the post of Head Accountant/Deputy Accountant but it was not possible for them to pass the said examination within two years thereof since no such examination was prescribed by the State Government. The contention thus is that the State Government having failed to prescribe the examination for promotion to the post of Head Accountant/ Divisional Accountant prior to their promotion or within two years thereof as contemplated by the aforesaid proviso, the Petitioners must be deemed to be relieved from passing the said examination and should be treated as regular and substantive appointees in the posts of Head Accountant/Divisional Accountant.

15. In our view, the above submission based upon the proviso to the rule for promotion to the post of Head Accountant/Divisional Accountant contained in Appendix XI cannot be accepted. The proviso is not intended to relieve the promotee to the post of Head Accountant/Divisional Accountant of the necessity of passing the examination which may be prescribed therefore. What is intended by the proviso is that if there is a prescribed examination, he has to pass it within two years of the date of his promotion or the date of his eligibility to appear at the said examination failing which it would entail his reversion to his lower post if the appointing authority so chooses to do. The above proviso is thus

of no assistance to the Petitioners so as to confer upon them the status of permanent or substantive holders of the posts of Head Accountants/Divisional Accountants.

16. Considering next the submission made by the learned Counsel for the Petitioners that the Petitioners stand regularised in the posts of Head Accountant/ Divisional. Accountant in view of the Circular of the State Government dated 4-2-1988, it may be seen that the said Government Circular dated 4th February 1988 was issued only to remove the confusion on the question whether the selection by the Selection Board was necessary for appointment by promotion in the District Service Class HI of the Zilla Parishad. It is clarified in the said circular dated 4th February 1988 that the Selection Board was required to select the candidates by nomination to class III posts in the District Services of the Zilla Parishad and was not empowered to select the candidates for appointment by promotion. It was thus laid down in the said circular dated 4th February 1988 that the appointment by promotion made by the Chief Executive Officer of the Zilla Parishad would not come within the purview of the Maharashtra Zilla Parishads and Panchayat Samitis (Removal of Difficulties) Order, 1983 and the appointments of such promotees would stand regularised provided that these appointments were made as per the provisions of the Act and the Recruitment Rules framed thereunder.

17. It may be seen in this regard that by the letter dated 10th June 1988 addressed to the Commissioner, Nasik, the State Government has clarified that the appointment by promotion in District Service Class III in the Zilla Parishad does not come within the purview of the Selection Board. It is necessary to state that although the Petitioners have in this regard relied upon the Maharashtra Zilla Parishads District Services Recruitment (Without Consulting Selection Boards) Rules, 1983 also, the Draft Rules under the Government Resolution dated 21st July 1983 which were filed by the Petitioners*in support of the above submission have not finally come into force as admitted by both the parties. However, the fact remains that as per the Government Circular dated 4th February 1988 as clarified by the letter dated 10th June, 1988 the appointment by promotion in the District Service (Class III) of the Zilla Parishad does not come within the purview of the Selection Board.

18. The crucial question however, is whether the appointments of the Petitioners stand regularised as per the Government Circular dated 4th February 1988. As already pointed out, the condition for regularisation of the appointment of a promotee is that the appointment by promotion must be in accordance with the provisions of the Act and the Recruitment Rules framed thereunder. As already pointed out, Rule 5 read with Appendix XI. Rule 6(6) and Rule 8 prescribe the condition of passing the departmental examination for appointment by promotion to the post of Head Accountant/Divisional Accountant and since the Petitioners have not fulfilled the said condition which may also be due to the fact that no such examination was provided for them either prior to or within two years after

their promotion, it cannot be said that the Petitioners have fulfilled the qualification laid down under the Recruitment Rules. Their promotion in the post of Head Accountant /Divisional Accountant, therefore, cannot stand regularised even as per the Government Circular dated 4-2-1988.

19. At this stage, we may consider the submission made on behalf of the Petitioners that they were not required to pass the Maharashtra Finance and Accounts Service Class III Examination or any other examination and that their appointments by promotion were only subject to the confirmation by the Selection Board. In this regard, our attention is drawn to the promotion order of the Petitioners dated 16-2-1984 in which it is stated that their appointments by promotion were purely temporary and subject to the confirmation by the Selection Board. The submission is that the appointments of the Petitioners were not subject to the passing of the departmental examination prescribed under the Rules but that their promotions were subject to the confirmation by the Selection Board only. The further submission is that since the Selection Boards were abolished, the said promotions stood regularised. There is no merit in the above submission. What is meant by confirmation by the Selection Board in the order of promotion dated 16-2-1984 is that the Selection Board would scrutinise the appointments as per the Recruitment Rules and thereafter it may confirm or may not confirm the same. It cannot surely mean that the appointees under the said appointment order were not required to satisfy the conditions under the Recruitment Rules for their regular appointment.

20. Similarly the submission made on behalf of the Petitioners that as per Rule 4(b) of the Maharashtra Finance and Accounts Service Class III Competitive Examination Rules, 1987 they are exempted from appearing at the examination prescribed in Annexure XI of the Recruitment Rules for promotion to the post of Head Accountant/Divisional Accountant is not correct. It may be seen that the aforesaid Rules are framed by the State Government for appointment of the Government servants to the posts in Maharashtra Finance and Accounts Service Class III in place of its old rules in that regard. It may further be seen that since the Recruitment Rules contained in Annexure XI had prescribed the condition of passing the Maharashtra Finance and Accounts Service, Class III Examination for promotion of the Zilla Parishad employees to the post of Head Accountant/ Divisional Accountant held by the State Government for its own employees, the question before the State Government, was whether the Zilla Parishad employees should be allowed to appear for the said examination or not, which question stood concluded when a separate examination was provided for the Zilla Parishad employees under the Government Resolution dated 25th June 1986 (see Annexure II). It was, therefore, made clear in Rule 4(b) of the aforesaid Rules under the Government Resolution dated 9-11-1987 that the competitive examination prescribed for Government servants under the aforesaid Rules would not be applicable to the employees of the District Service Class III (Accounts) Grade I of the Zilla Parishad. Thus from the aforesaid Rule 4(b) contained in Government Resolution dated 9-11-1987 (Annexure IX) it cannot be

inferred that the Petitioners are relieved of the condition of appearing for the departmental examination which is now provided for the Zilla Parishad employees under the Government Resolution dated 25th June 1986. The above contention raised on behalf of the Petitioners, therefore, deserves to be rejected.

21. It is then urged on behalf of the Petitioners that since their appointments are made in the permanent or quasi permanent posts for more than three years, they should be treated as holding their posts substantively under the Rules. In pressing the said submission, the learned Counsel for the Petitioners has urged that as per Rule 8 of the Maharashtra Zilla Parishads District Services Rules, 1968, if there are no rules framed under the Act regulating a particular condition of service, the rules applicable to the Government servants in that regard are applicable to the servants of the Zilla Parishad also. He has then brought to our notice the definitions of the expressions ''permanent post'' and the ''temporary post'' given in Rule 9(43) and Rule 9(56) of the B.C.S.R. The material is also placed on record to show that out of the cadre, strength of 9 posts 4 posts were permanent and the remaining five posts were quasi permanent posts as they were continued for a period of more than 3 years although they were temporary posts sanctioned every year.

22. Perusal of the definition of the expression ''permanent post'' given in Rule 9(43) shows that it is a post carrying a definite rate of pay sanctioned . without limit of time. The ''temporary post'' however is defined in Rule 9(53) to mean a post carrying definite rate of pay sanctioned for a limited time.. The note under the definition of the expression ''temporary post'' however, is strenuously relied upon to show that if the temporary post is sanctioned for a period of not less than 3 years, then it is a quasi-permanent post and substantive appointment could be made in that post. It is held in the decision of the Supreme Court in the case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, that merely because the person is a temporary appointee it cannot be said that he is not substantively appointed if he fulfils necessary conditions for regular appointment such as probation and consultation with the Public Service Commission etc. The above decision is followed in the later decisions of the Supreme Court also. See O.P. Singla and Another Vs. Union of India (UOI) and Others, and G.K. Dudani and Others Vs. S.D. Sharma and Others, . It is thus firmly established in view of the above decisions of the Supreme Court that an appointment can be made in a substantive capacity in a temporary post continued for a long time or if an appointment is made temporarily in such a temporary post it can be treated as in a regular and substantive capacity if the appointee fulfils the requisite qualifications for the post in which he is appointed and completes the period of probation. It is. therefore, possible that the substantive appointments could be made in the temporary posts in the instant case which were quasi-permanent in the sense that they were continued for a long time i.e. more than three years by the State Government.

23. The question, however, is whether the Petitioners can be said to be appointed

substantively in such posts or even in the permanent posts. Apart from the appointment order dated 16-2-1984, the seniority list (Annexure-I) of the Head Accountant/Divisional Accountant which is filled by the Petitioners also shows that the promotions and/or the appointments of the employees as Head Accountant/Divisional Accountant shown therein including the Petitioners are temporary. It is also shown in column No. 10 of the Seniority List that they did not ask for permission to appear for the Maharashtra Finance and Accounts Service Class III Examination. Apart from the dispute whether the Petitioners could have asked for permission to appear for the above examination when it was not prescribed till the G.R. in that regard was issued on 25th June 1986, the fact remains that in the absence of passing the departmental examination which is prescribed as a condition for promotion in Appendix XI of the Recruitment Rules, the Petitioners cannot get the status of confirmed employees in view of Rule 6(6) of the Recruitment Rules. We have also pointed out that even under the G.R. Dated 4-2-1988, their promotions do not stand regularised unless they pass the examination as required by the rule contained in Appendix XI. They therefore continue to be temporary employees and cannot obtain the status of the substantive holders of the posts of Head Accountant/Divisional Accountant, whether they were in permanent posts or temporary posts which had acquired the character of quasi-permanent posts as urged on their behalf. The above contention urged on behalf of the Petitioners "therefore, cannot be accepted.

24. We may now turn to the requirement of the Government Resolution dated 25-6-1986 prescribing examination for appointment to the post of Head Accountant/Divisional Accountant. Para 3 of the scheme of the examination given in Annexure I to the Government Resolution dated 25-6-1986 shows that the incumbents who hold the posts of Deputy Accountants in the District Services (Class III) (Accounts) Grade II and who have passed the examination prescribed for appointment to the post of Deputy Accountants are eligible to appear for the examination prescribed therein. The question that arises for consideration is whether the Petitioners can be said to be the incumbents holding the posts of Deputy Accountants at the time of above Government Resolution dated 25th June 1986 is issued.

25. In appreciating the above contention, it may be seen that the Petitioners are working in the posts of Head Accountants/Divisional Accountants as temporary employees and as we have shown above, they are not holding the said posts in any substantive capacity because they have not fulfilled the requisite qualification of having passed the examination prescribed in Appendix XI of the Recruitment Rules necessary for holding the said posts in the substantive capacity. As they were thus temporary employees, they could always be sent back or reverted to their substantive posts for having not passed the requisite examination. Therefore, although the Petitioners are working in the post of Head Accountant/Divisional Accountant, they are in truth and substance the holders of the posts of Deputy Accountant within the meaning of para 3 of the said Annexure I to the Government Resolution dated 25-6-1986. It is, therefore,

necessary for the Petitioners to appear for the departmental examination in question for regular promotion in the posts of Head Accountant/Divisional Accountant. The above interpretation stands supported by the proviso to the rule for promotion contained in Appendix XI which requires the promotee to pass the examination within two years.

26. The learned Counsel for the Petitioners has strenuously urged before us that if on our above interpretation of the Government Resolution dated 25-6-1986 the Petitioners are required to appear for the departmental examination envisaged by the Government Resolution dated 25-6-1986, the interpretation thus put by us upon the said Government Resolution dated 25-6-1986 would lead to an arbitrary result because in view of the exemption granted in para 6 of the Annexure to the said Government Resolution dated 25-6-1986 to the Zilla Parishad servants who have crossed 45 years of age from passing the said examination, the Petitioners face reversion from their posts of Head Accountant/ Divisional Accountant or at any rate loss of seniority in the said post where as the persons like the Respondents Nos. 2 and 3 who are juniors to them in the post of Head Accountant /Divisional Accountant stand protected by the said clause of exemption and can therefore, continue in the said post and can claim seniority over them.

26-A. In our view, the above result is only fortuitous. Once all the temporary employees in the post of Head Accountant/Divisional Accountant are treated as the holders of the post of Deputy Accountants within the meaning of para 3 of the Government Resolution dated 25-6-1986, the benefit of exemption granted under para 6 of Annexure I of the Government Resolution dated 25-6-1986 to the Deputy Accountants who have crossed the age of 45 years can be availed of by the Deputy Accountants like the Respondents 2 and 3 who are temporarily promoted as Head Accountant/Divisional Accountant. Only because some temporary Head Accountants/Divisional Accountants happen to enjoy the said benefit of exemption under para 6 of the Annexure to the Government Resolution dated 25-6-1986, the said Government Resolution cannot be interpreted in manner so as to dispense with the applicability of the examination prescribed thereunder to the Petitioners. The above submission made on behalf of the Petitioners cannot thus be accepted. For the same reason, the further submission made on behalf of the Petitioners that the clause of exemption i.e. para 6 of Annexure I to the Government Resolution dated 25-6-1986 is not applicable to the temporary appointees in the post of Head Accountants /Divisional Accountants cannot also be accepted because as pointed out above, they are really speaking the holders of the post of Deputy Accountant within the meaning of para 3 of the aforesaid Annexure I to the Government Resolution dated 25-6-1986.

27. Although the principal contentions raised on behalf of the Petitioners thus deserve to be rejected, to avoid the immediate hardship which is likely to be caused to them or about which there is apprehension in their minds, their

seniority in the post of Head Accountant/Divisional Accountant needs to be protected till they avail of the four chances of passing the examination in question, as rightly held by the Divisional Commissioner. Amravati in his impugned order dated 7-4-1988. It may be seen that the Petitioners were appointed on 16-2-1984 till which time and even thereafter till the aforesaid Government Resolution dated 25th June 1986 was issued, no departmental examination was prescribed for promotion to the post of Head Accountant/ Divisional Accountant. The Petitioners have thus continued in service from the date of their appointment without any break. Some Deputy Accountants were appointed thereafter as Head Accountants/Divisional Accountants who are thus junior to the Petitioners in the said post. However, some of them stand protected because of the benefit of exemption to them from passing the examination in question. In these circumstances, the seniority of the Petitioners in the post of Head Accountant/Divisional Accountant needs to be protected till they avail of the four chances for passing the examination.

28. It may be seen that under the proviso to the rule for appointment by promotion to the post of Head Accountant/Divisional Accountant contained in Appendix XI of the Recruitment Rules, the promotee has to pass the examination prescribed in the said rule or its equivalent within two years from the date of his promotion or from the date he is eligible to appear at the said examination. Since the examination itself is prescribed only as per the Government Resolution dated 25-6-1986, the period of 2 years for passing the examination available to the promotees can be counted only from the date of holding the first examination under the said Government Resolution dated 25-6-1986. During these two years, since two examinations have to be held each year as per para 1 of the annexure to the Government Resolution dated 25-6-1986, there are four examinations available to the promotees to pass the examinations. It is for this reason that the Divisional Commissioner held that their seniority list shall not be altered till they avail of four chances i.e. four examinations available to them during the two years within which they have to pass the departmental examination in question.

29. In order, therefore, to avoid any hardship or injustice to the Petitioners, it is necessary that they should not lose their seniority in the post of Head Accountants/Divisional Accountants till they exhaust the four examinations for clearing the departmental examination in question so that they would not face reversion on the ground of not passing the examination till they exhaust their four chances. The claim of the Petitioners in that regard, therefore, deserves to be protected. The Commissioner, Amravati had directed that the four examinations should be counted with effect from the date of introduction of the scheme of the examination. We, however, feel that the examination which is held from 25-10-1988 should be excluded in computing the four examinations because as pointed out in this judgment for the reasons for which even the Zilla Parishad is responsible, the instant writ petition could not be decided before 25-10-1988. Therefore, in slight modification of the order of the Commissioner we direct that the four examinations should be counted from the examination

next to the examination which was held from 25-10-1988 and that the period of two years should thus be counted accordingly from the date of the next examination.

In the result, for the reasons given in this judgment we affirm the order of the Divisional Commissioner dated 7-4-1988 with the slight modification as indicated in the above para. Except for the said modification, the instant writ petition fails and is dismissed. In the circumstances, however, there will be no order as to costs.

