
(1985) 09 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 3246 of 1982

Omprakash Brahamanand Pohnu

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-09-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1985) 2 BomCR 92

Hon'ble Judges : H.H. Kantharia, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : N.H. Gursahani and Ahmed A. Irani, for the Appellant; D.P. Hedge, A.G.P. and R.D. Rane, A.G.P. for respondents Nos. 1 to 3, for the Respondent

Judgement

C.S. Dharmadhikari, J.—The petitioner in this case was appointed as a Overseer with the Maharashtra Housing and Area Development Authority vide order dated 22-7-1964, with effect from 19-6-1964. Thereafter on 9-9-1970 he was appointed as a Deputy Engineer. On 18-12-1978 and 22-1-1979 he was given additional charge of the higher post. He was relieved of one of such additional charge on 6-3-1979 but was again given it on 29-6-1979 and relieved of it on 29-3-1980. Thereafter on 5-8-1980 and 17-8-1981, the respondents, who are junior to him in service, were promoted as Executive Engineers. The petitioner made various representations to the higher authorities and also sought an interview with the Vice-President, but the representations came to be rejected and unfortunately he was also not given the interview by the Vice-President. Thereafter Vide order dated 27-8-1982 respondents Nos. 4, 5 and 6 were promoted as Executive Engineers superseding the claims of the petitioner who was senior in the cadre of Deputy Engineers to all the respondents. It is these orders of promotions and supersession which are challenged in this writ petition.

2. Shri Gursahani, the learned Counsel appearing for the petitioner, contended before us that the supersession of the petitioner is wholly illegal since from the affidavit filed by the respondents it appears that certain adverse remarks

recorded in his confidential record were taken into consideration by the Selection Committee and admittedly such confidential remark were never communicated to him. He also contended that in the absence of recruitment rules, or regulations governing the conditions of service, it was not open to the authority to constitute a Selection Committee more so, without laying down the criteria governing the selection or promotion. He also contended that without considering the representations made by the petitioner against his placement in the Seniority list or qua the promotions of his juniors, it was not open to the authority to further promote his juniors or finalise the Seniority list. Shri Gursahani also contended that the Seniority list itself is bad since the continuous service of the petitioner from the date of his appointment was not taken into consideration while determining his seniority in the cadre of Deputy Engineers. In support of his contentions Shri Gursahani relied upon the decisions of the Supreme Court in Amar Kant Choudhary Vs. State of Bihar and Others, and Gurdial Singh Fijji Vs. State of Punjab and Others, . For challenging the Seniority List he has relied upon the decision of the Supreme Court in P.S. Mahal and Others Vs. Union of India (UOI) and Others,

3. On the other hand, it is contended by Shri Hegde that it is no doubt true that no rules or regulations are framed under the Act in that behalf. Still by resolution the authority has prescribed a procedure in the matter of promotions. The resolution passed by the authority on 19-10-1978 in terms prescribes the constitution of a Selection Committee. In the absence of rules or regulations it was open to the authority to set upon the resolution. Therefore, it cannot be said that the constitution of the Selection Committee was any way illegal. The case of the petitioner was put up before the Selection Committee on all the three occasions and after considering the cases of all the eligible candidates, the Selection Committee came to the conclusion that the petitioner was not suitable for promotion and, therefore, it cannot be said that any of the fundamental rights of the petitioner is either breached or his claim is overlooked. In law an employee has only a right to be considered for promotion and he cannot claim promotion as of right. After considering the case of the petitioner the Selection Committee found him unfit and found his juniors suitable for promotion and, therefore, the petitioner cannot make any grievance. So far as the challenge to the seniority list is concerned, it is contended by Shri Hegde that such a challenge is not specifically raised in the writ petition, nor the persons who are adversely affected are before this Court and, therefore, this Court should not go into the question of Seniority; more so at this late stage.

4. Shri Hedge was fair enough to place before us the resolutions passed by the Maharashtra Housing and Area Development Authority, dated 19-10-1978, 2-2-1979 and 22-11-1983 in the matter of the constitution of the Selection Committee. He has also placed before us the confidential records of the petitioner. From the affidavit filed before us, it is quite clear that there were adverse remarks in the confidential record of the petitioner only for the year 1979-80. Under the rules followed by the authority the Selection Committee is

obliged to consider five years confidential record of an employee. Therefore, for the rest of the four years the record of the petitioner was good. Admittedly, the adverse remarks in the confidential records for the year 1979-80 were never communicated to the petitioner even till today. In these circumstances, in view of the law laid down in Amar Kant Choudhary Vs. State of Bihar and Others, , the said remarks could not have been taken into consideration by the Selection Committee while deciding the question of suitability for promotion. The criteria for promotion is admittedly seniority cum merit. Therefore, obviously seniority plays a vital part. Though the petitioner was senior, he was by passed only on the basis of the uncommunicated adverse remarks, which should not have been done in view of the law laid down by the Supreme Court. Therefore, obviously the promotions of the respondents, though made in the years 1980, 1981 or 1982 are liable to be quashed and set aside on this short ground.

5. In the view which we have taken, it is not necessary to decide any other contentions raised and argued before us by Shri Gursahani, including the one of mala fides.

6. In the result, the rule is made absolute. Promotions of respondents Nos. 4 to 9 are quashed and set aside and the respondents are directed to consider the cases of all eligible persons, including the petitioner, afresh without taking into consideration the adverse remarks which are not communicated to the petitioner. In case the petitioner is found fit for promotion, it is needless to say that he will be entitled to the deemed date and other benefits. There will be no other as to costs.