
(1987) 03 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 488 of 1985

Prabhakar Balaji Patil

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) MhLj 368

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : S.M. Dange, for the Appellant; N.B. Jagad, for Advocate-General for State and C.U. Bora, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution is for a revision of the list prepared on 15-9-1981 showing the seniority of Assistants eligible for promotion to the post of Superintendents in the Subordinate Secretariat Service.

2. Petitioner joined as an Assistant in the Mantralaya on 20-10-1970 and came to be attached to the Industries, Energy and Labour Department (IELD). Assistants have a right to be promoted to the posts of Superintendents. This right was regulated by GR No. EXM-1261/80969/O&M dated 28th December 1961. They had to appear for an examination and the two conditions precedent for being permitted to appear for the examination were: -

(1) Passing of post recruitment training examination (PRT). The PRT examination could be taken up by an Assistant subject to the condition that he had attended 75% of the classes held for that purpose; and

(2) Completion of not less than five years" continuous service.

Subject to the above pre-conditions, the rules required that the candidate pass out the Superintendents" examination in three chances which had to be availed

of within a period of four years. This was partially relaxed in 1964 by GR No. EXM-1264/7130-O&M dated 22nd October 1964 and backward class communities became entitled to four chances within a period of five years. Petitioner belongs to a community recognised as an "Other Backward Community", and was therefore, eligible for the concession made by the 1964 GR. On 6-1-1977, the 1961 rules were repealed and replaced by another set (hereinafter to be referred to as the "New or 1977 Rules"). They were deemed to have come into force on June 1, 1977. Four of the important rules in the 1977 set were those bearing Nos. 4, 5, 6 and 7. Rule 4 required every Assistant to pass the Superintendents' examination within nine years of his continuous service as an Assistant and within three chances. The concession earlier given to the OBCs was withdrawn and made limited to Scheduled Caste, Scheduled Tribes and Denotified and Nomadic Tribes. It was made clear that chances availed of under the 1961 Rules were to be reckoned towards the computation of the total number of chances given by the new Rules. Rule 5 specified the consequence of failure to pass the examination. It laid down that an Assistant failing to pass the examination within the period and chances specified, would lose seniority for the purpose of promotion vis-a-vis all the Assistants who had passed the examination before him and also below all those who were senior to such Assistants below whom he was placed the latter, subject to the condition, that they had passed the examination after him but within the period and chances specified in Rule 4. Rule 6 spoke of the examination being held once in a year in the month of November or December. This of course was to be so ordinarily. Rule 7 laid down that if an examination was not held in any particular year, that year was to be excluded in the computation of the period specified in Rule 4. This Rule 7 came to be amended in 1984. The 1984 amendment provided for insertion of certain words whereby Rule 7 read thus : -

"Consequences when Examination not held - If for any reason, the Examination is not held in any particular year, after an Assistant becomes eligible to appear for the Examination, that year shall be excluded in computing the period specified in rule 4."

(Words in italics denote the inserted words.)

The amendment like other amendments in the Rules was placed in the Rules with retrospective effect ie. to be deemed as having come into force on June 1, 1977, the very day on which the 1977 Rules had come into force.

3. Petitioner was not allowed to appear for the PRT examination held in 1973 as he had not got 75% attendance in the classes. In 1974, he appeared but could not succeed at that examination. The next year i.e. 1975 he did not appear. For the PRT examination held in November 1976, petitioner appeared and was declared successful in the results which came in February 1977. The Superintendents' examination for the year 1976 was not held in that year, but appears to have been postponed and held in January 1977. Petitioner did not appear for this examination, and possibly, because he had not yet acquired the

eligibility in view of his not having passed the PRT examination. The next two examinations were held in March 1978 and January 1979. In both these examinations, the petitioner appeared, but failed. It was in February 1980 that petitioner again appeared and this time passed.

4. The seniority list of 15-9-1981 to which exception is taken by the petitioner shows him at serial No. 31. Petitioner's contention is that he should have been placed at serial No. 16. His seniority as worked was the result of a wrong construction of the Rules. Firstly, he was not governed by the 1977 Rules. This was because the 1961 Rules were in force when he was recruited and these conferred certain rights upon him. None of the rights which had accrued to him under the 1961 Rules could be taken away by the 1977 Rules. If his claim were considered vis-a-vis 1961 Rules, he had passed the Superintendents' examination within 10 years of joining service and in four chances as required by the said Rules. Alternatively, and assuming that the 1977 Rules applied, no examination had been held in the year 1977. The postponed examination could not be reckoned as an examination for the computation of his chances. In any case, he could not appear for the January 1977 examination because of the delay in the declaration of the PRT results of those who had appeared for the examination held in November 1976. Rule 7 of the 1977 Rules was attracted and if the 1977 examination was excluded, he had passed out in the third attempt after having failed in the first two i.e. examinations in 1978 and 1979. The amendment effected in Rule 7 in 1984 was illegal. Respondents had interpreted the 1977 Rules in the manner suggested by him vis-a-vis the cases of S.T. Chavan and P. C. Patil. There was no reason to discriminate against him. The amendment made in 1984 was vitiated by bad faith as the sole purpose behind the same was to cause personal loss to the petitioner.

5. Respondents have filed a return through Mr. Arabatti, a Desk Officer in the IELD. In this return, it is contended that petitioner had to pass the Superintendents' examination in three attempts, and this, within nine years from the date of his appointment. It was the 1977 Rules which governed his case and as he had not conformed thereto, the petition deserved to be dismissed with costs. No explanation is given in this return to the favour allegedly shown to S. T. Chavan and P. C. Patil. Further at the hearing it was stated that the error in the case of S. T. Chavan had been brought to the notice of the concerned authorities and it was expected that the necessary correction would be made. So far as P. C. Patil was concerned, the error was there and no explanation could be essayed therefor.

6. The short question to be decided is whether petitioner is right in contending that he should have been placed at serial No. 16 in the seniority list prepared on 15-9-1981-- The first point would be whether the petitioner was governed by the 1961 Rules -- Petitioner contends that these Rules were in force in 1970 when he was

appointed as an Assistant. It was on the basis of these rules that he planned his

future. Having regard to the change brought about in the 1961 Rules, whereby the backward classes not excluding the OBCs were given the right to pass the Superintendents' examination in 10 years and four chances, he did not hasten to join the PRT classes. Had the concession not been given or withdrawn earlier, he would have taken remedial measures. But no one has a vested right in concessions being frozen for all times to come. The concession given to backward communities including OBCs is with a view to enable these classes to catch up with the rest of the population which is not so designated. As Mr. Bora, rightly remarks, the grant, continuance and withdrawal of these concessions is a matter to be decided exclusively by the State. Therefore, petitioner cannot take recourse to the 1961 Rules, unless of course there was any saving vide the 1977 Rules. Far from there being any saving of the 1961 Rules in the 1977 Rules, the latter were made operative five days prior to their publication. Next, the concession formerly available to backward communities was retrospectively taken away in so far as OBCs were concerned. Lest there be any misconception, the second proviso to Rule 4 clarified that chances already availed of would be counted towards the computation of total number of chances available under the new Rules also. In Rule 6, the provision that the examination be held in November or December, was qualified by the first word ordinarily. These are clear indications that nothing of the 1961 Rules was saved. Petitioner cannot therefore complain of the curtailment in the number of chances as also the period within which he had to appear for the Superintendents' examination. His seniority cannot be determined with reference to the repealed Rules.

7. Turn now to the 1977 Rules. On the date the rules came into force, petitioner had completed five years' service as an Assistant and had also undergone the PRT examination. That the results of the 1976 PRT examination were declared after the date of January 1977 Superintendents' examination, is not of any relevance. Mr. Dange seeks to interpret Rule 7 in a manner, as to widen the number of years spoken of by Rule 4. This is not wholly impermissible. If no examination is held for nine years, then of course the question of a candidate passing within those nine years does not arise. But if examinations are held and if a candidate does not pass out within three chances, his seniority cannot but be affected. All that Rule 7 and the unamended Rule 7 at that provided was that a year in which the examination was not held had to be excluded. But an examination which was held could not be ignored for reckoning the chances available to a candidate vis-a-vis Rule 4. Thus seen, petitioner completed his five years' service on 20-10-1975. After that date, three Superintendents' examinations were held and these were in the years 1977, 1978 and 1979. In the first examination - petitioner did not appear and this cannot be shrugged off as not fatal because the delay in the passing of the PRT examination was his own fault. The two failures of 1978 and 1979 are rightly admitted by the petitioner as going against him. It was on the fourth occasion that he passed the examination. But this fourth occasion came after the completion of nine years. Therefore on a proper construction of the Rules, petitioner Cannot complain of the placement

shown against his name in the seniority list prepared on 15-9-1981.

8. There remains the grievance that S. T. Chavan and P. C. Patil, though in the same position as him, have not been deprived of their placement in the seniority list. Unfortunately, the respondents chose not to file a supplement to their pleadings after this plea came into the petition through an amendment. Therefore what is stated by Counsel across the Bar at the time of hearing cannot be taken into consideration. The position is that two persons not deserving of indulgence have received the benefit of a faulty construction of Rule 4. But does an unwarranted favour shown to one if there be no power to confer such a favour, entitle another to the same favour ? In other words, do two wrongs make one right ? The answer, must be plainly in the negative. The result therefore is that the petition fails and has to be dismissed. Hence the order.

ORDER

Petition dismissed. Rule discharged, with parties being left to bear their own costs.