(2025) 04 BOM CK 0292

In the Bombay High Court

Case No : Writ Petition No. 5904, 6388 Of 2014

Prakash Narayan Dhobale APPELLANT

Vs

State Of Maharashtra, Through Secretary, Water Supply And Sanitation Dept And Ors RESPONDENT

Date of Decision : 16-04-2025

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2025) 04 BOM CK 0292

Hon'ble Judges : Ravindra V. Ghuge, J;Ashwin D. Bhobe, J

Bench : Division Bench

Advocate : Sanjay Kshirsagar, Rahul Shinde, Abjijeet Naik, Ajit R. Pitale

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The undisputed factors are that the Petitioner, namely Prakash Dhobale passed the professional examination for the post of Junior Engineer in 1975. The Petitioner, namely Krishnakumar Pate passed the professional examination for the post of Junior Engineer and scored first class and stood first in the examination at Jalgaon in October, 1977. When the promotion to the post of Sub-Divisional Engineer was undertaken in 1995, both the Petitioners were above 40 years of age and were less than 45 years. Both the Petitioners applied for the Departmental Examination. On a query raised by an Executive Engineer, it was informed that those who have crossed the age of 40 years, were not required to pass the Departmental Examination. Hence, the Petitioners were further promoted to the post of Executive Engineer, which they held until the passing of the impugned orders.

3. In the first Petition, the Petitioner has put forth Prayer Clauses (B), (C), (D)

and (E), as under :-

"B] That the Hon'ble Court be pleased to issue an appropriate writ, direction and order under provisions of Article 226 of the Constitution of India, 1950 and be pleased to direct the Respondents to treat the petitioner as legally and validly promoted as Executive Engineer on the basis of the exemption letter dated 26th September, 1997, from passing the professional examination and direct the Respondent to release all the increment from 1997-2010 which are withdrawn after superannuation, revise the pay and release all the arrears of salary, revise all the pensionary benefits and grant all consequential service benefits, with interest, within a period of two months from the date of the order of this Hon'ble Tribunal.

C] That this Hon'ble Court be pleased to an appropriate writ, direction and order under the provisions of Article 226 of the Constitution of India, 1950 and be please to quash and set aside the order bearing No.Ma.Ji.Pra./Vya.Pari./09/ ET.92/ Aa-1 dated 21st March, 2012 passed by Respondent No.2.

D] That this Hon'ble Court be please issue an appropriate writ, direction and order under the provisions of the constitution of India, 1950 thereby quashing and setting aside the passing of the order No.56, bearing No.Ja.Kra.Astha/416/2011 dated 4th February 2011 passed by the Respondent No4.

E] That this Hon'ble Court be please to issue an approprite writ, direction and order under the provisions of Article 226 of the Constitution of India 1950, thereby quashing and setting aside the order dated 9th July, 2010 bearing No.Ja.Kra Shri. Dhoble/Vya-Pa.Ri/09/ET -92/ Aa-1 passed by the Respondent No.2."

4. In the second Petition, the Petitioner has put forth Prayer Clauses (B) and (BB), as under :-

"B] That the Hon'ble Court be pleased to issue an appropriate writ, direction and order under provisions of Article 226 of the Constitution of India, 1950 and be pleased to direct the Respondents to treat the Petitioner as legally and validly exempted from passing the professional examination by the order dated 24/2/1997 and direct the Respondents to release all the increments from 1997-2008 which are withdrawn, revise the pay and release all the arrears of salary, revise all the pensionary benefits and release the difference in pensionary benefits after such revision as per VIth Pay Commission and grant all other consequential service benefits, with interest, within a period of two months from the date of the order of this Hon'ble Tribunal.

BB] That the Hon'ble Court be please to issue an appropriate writ, direction and order under provisions of Article 226 and 227 of the Constitution of India, 1950 thereby quashing and setting aside the order bearing Number Ja Kr Aa2/3017/2011 dated 10.10.2011 passed by the Respondent No.4."

5. In the first Petition, the Petitioner namely, Prakash Narayan Dhobale was appointed on 2nd July, 1974 as a Junior Engineer. His date of birth is 28th July, 1952. His promotion on the post of Deputy Engineer occurred on 14th March, 1995, when he was 42 years, 7 months and 17 days. He completed his age of 45 years on 28th July, 1997 and superannuated on 31st July, 2010.

6. The second Petitioner namely, Krishnakumar Nathu Pate was appointed on 12th July, 1974 as a Junior Engineer. His date of birth is 5th December, 1950. His promotion occurred on the post of Deputy Engineer on 19th April, 1995, when he was 44 years, 4 months and 14 days. He completed his age of 45 years on 4th December, 1995 and superannuated on 31st December, 2008.

7. The Rules and the attached Appendix are cited by the Maharashtra Jeevan Pradhikaran (MJP). Section 2 of the Maharashtra Public Works Manual, is with regard to the procedure and Rules pertaining to the professional examination of the Deputy Engineers. Rule 2 of the Maharashtra Public Works Manual, reads as under :-

"2. Officers who are 45 years old or above are totally exempted from passing the Professional Examination while those who are between the ages of 40 and 45 years are exempted from passing the Professional Examination, except in the subject of 'Accounts'.

The age of 40 to 45 years for the purpose of exemption from passing the Professional Examination should be counted with reference to the date of first appointment or promotion to the Class-II Cadre and the liability of an Officer to pass the examination so far as it exists with reference to the date of the first appointment or promotion will not cease on attaining the age of 40 to 45 years subsequently."

8. The MJP has contended that Prakash Narayan Dhobale, was promoted to the post of Deputy Engineer on 14th March, 1995, and Krishnakumar Nathu Pate, was promoted to the post of Deputy Engineer on 19th April, 1995. Therefore, as both were between 40 to 45 years of age, it was mandatory for them to pass the Departmental Professional Examination (DPE), only with the subject 'Accounts', within a period of three years upto 14th March, 1998. Both the Petitioners did not take the said examination because an erroneous entry was made in the service book that as they had completed 45 years, they were exempted from passing the examination.

9. It is further contended that the Member Secretary of the MJP had taken cognizance of such erroneous entries and issued a Circular dated 30th July, 2007, by which, the exemption erroneously granted contrary to the Rules, was cancelled in the light of Clause 2(b) and Clause 7 of the Circular, with immediate effect. Clause 2(b) and Clause 7, read as under :-

10. In view of the above, show cause notices for granting an opportunity of hearing, were issued to the Petitioners on 2nd December, 2009 (Prakash Narayan

Dhobale) and 3rd March, 2010 (Krishnakumar Nathu Pate). After receiving their replies, the impugned orders were passed and the Petitioners were reverted from the post of Executive Engineer to the post of Deputy Engineer. By way of a gracious act, the MJP decided not to recover the wages and allowances paid to the Petitioners whilst they occupied the post of Executive Engineer. It is also canvassed that these Petitions were filed belatedly in the year 2014 and, therefore, the Petitions deserve to be dismissed for the inordinate delay. It is also prayed that the Petitions be dismissed on merits.

11. The Petitioners have contended that the orders of exemption are passed in 1997. The orders of cancellation of the exemptions are passed after 14 years in 2011. Thereafter, both the Petitioners were making representations. One of them also approached the Maharashtra Administrative Tribunal and withdrew the original application since the Tribunal held on 18th December, 2013, that it does not have jurisdiction. It is in these circumstances, that they approached this Court in March, 2014. The Petitioners, namely Prakash Narayan Dhobale and Krishnakumar Nathu Pate, have superannuated in 2010 and 2008, respectively.

12. Further contention of the Petitioners is that though the orders of exemption may have been wrongly passed in 1997, the cancellation of exemption is after 14 years in 2011. Both the Petitioners have superannuated in 2010 and 2008, respectively. Hence, it is canvassed that the error committed by the Employer is sought to be rectified too late. Reliance is placed on the Judgment delivered by the Hon'ble Supreme Court in State of Maharashtra V/s. Jagannath Achyut Karandikar, 1989 Supp (1) SCC 393 and Sandesh Gajmal Shinde V/s. Nashik Municipal Corporation and others, 2017 (4) Mh.L.J. 220.

ANALYSIS AND CONCLUSION

13. Having considered the undisputed dates and sequence of events and the Rules applicable to these cases, it is obvious that the office of MJP made erroneous entries in the records of both these Petitioners, indicating that they were exempted from the departmental examination. Actually, candidates who were above 45 years were totally exempted from passing the professional examination. Those who were between the age group of 40 to 45 years, were partially exempted from passing the professional examination, though they were supposed to appear for the examination for the subject of 'Accounts'. As such, it is undisputed that these Petitioners were bound by the service regulations to clear the DPE only to the extent of the subject 'Accounts', within a period of three years upto March,1998, considering that they were promoted in March-April, 1995. The confusion has occurred on account of the erroneous entry by the officer of MJP.

14. Be that as it may, the issue that begs an answer is whether the clock could be reversed and the Petitioners could be penalized for a mistake committed by the MJP. In our view, it would be unjust, unreasonable and harsh to conclude that the Petitioners should be penalized for the default/mistake by MJP in wrongly

granting them an altogether exemption from appearing for the departmental examination (DPE). Had this error been noticed within a reasonable time, after the grant of exemption on 26th September, 1997 and 24th February, 1997, the Petitioners could have been granted an opportunity to appear for the Accounts examination.

15. Even after granting promotion after crossing 40 years of age, they could have attempted the DPE within three years since the promotions were granted on 14th March, 1995 and 19th April, 1995, respectively. As both of them were declared to be exempted, they did not appear for the said examination and the mistake was noticed by the MJP, only after both of them had superannuated. The Petitioner Prakash Dhobale superannuated on 31st July, 2010 and the Petitioner Krishnakumar Pate superannuated on 31st December, 2008. Prakash Dhobale was issued a show cause notice on 2nd December, 2009, which is 7 months prior to his superannuation and Krishnakumar Pate was issued a notice on 3rd March, 2010. As such, Prakash Dhobale was on the verge of retirement and Krishnakumar Pate had already superannuated. Nevertheless, the impugned orders were passed only after both had susperanuated.

16. In these peculiar facts and circumstances, and considering the Judgment in Jagannath Achyut Karandikar (Supra), cited before us, we do not find it justifiable to hold the Petitioners guilty for the mistake committed by the MJP. There is no averment by the MJP that these Petitioners had orchestrated the orders of exemption issued in their favour. Oblique or ulterior motives have not been attributed to their conduct.

17. In view of the above, Writ Petition No.5904 of 2014 is allowed in terms of Prayer Clauses (B), (C), (D) and (E), and Writ Petition No. 6388 of 2014 is allowed in terms of Prayer Clauses (B), and (BB).

18. Rule is made absolute in the above terms.

19. No order as to costs.

