
(2017) 04 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 393 of 2013

Shri Sandesh Gajmal Shinde	Vs	APPELLANT
Nashik Municipal Corporation		RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Constitution of India, 1950 — Article 16, Article 226

Citation : (2017) 3 AIRBomR 617

Hon'ble Judges : Anoop V. Mohta and Ravindra V. Ghuge, JJ.

Bench : Division Bench

Advocate : Mr. Atul G. Damle, Senior Advocate i/by Mr. Sachin D. Kadam, Advocate, for the Petitioner; Mr. M. L. Patil, Advocate, for the Respondent Nos. 1 to 3.; Mr. Pritesh K. Bohade, Advocate, for the Respondent Nos. 6 and 7

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J. (Oral)—Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. We have considered the strenuous submissions advanced by the learned senior Advocate appearing on behalf of the Petitioner and the learned Advocates appearing on behalf of the Respondents. With their assistance, we have gone through the record available.

3. Considering the grievance of the Petitioner and the issue before us, we are not required to advert to the entire submissions of the respective sides.

4. The undisputed factors in this case can be summarized as under :

i. The Petitioner is aggrieved by his exclusion from the promotion to the post of the Deputy Engineer.

ii. By resolution c.d.s. 1583/158 (215) Aa(10) dated 16.04.1984, the Irrigation Department provided for the trainee/diploma holding Engineers to be treated as Sectional Engineers after completing five years of service.

iii. The Petitioner completed such five years with Respondent No.1 Corporation on 04.02.2005 and became a Sectional Engineer.

iv. The departmental examination was prescribed by the State of Maharashtra for promotion to the post of Dy. Engineer. v. The Maharashtra Engineering Training Academy (META) conducts such examinations.

vi. By the Notification dated 08.06.1995, the General Administration Department (G.A.D.) had indicated that the seniority for promotion would be considered in favour of those candidates who have passed the departmental examination and the passing of such examination would be a criteria for raising the seniority of the said candidate.

vii. The G.A.D. issued another Notification dated 20.03.1997 by which the government took a decision that the candidates passing professional examination within the prescribed time and prescribed attempts, would stand higher in seniority than those candidates who have not passed the said examination.

viii. It was also contemplated that those candidates who have not passed the examination but have completed 45 years of age would be eligible for promotion, purely on the basis of attaining the age of 45 years though they may lose their interse seniority with those candidates who have passed the departmental examination.

ix. Respondent Nos. 6 and 7 have not attempted the departmental examination and have stayed away from the said examination. x. Respondent No. 6 attained the age of 45 years on 30.03.2008.

xi. The petitioner passed the departmental examination pursuant to the declaration of the result on 05.01.2009.

xii. Respondent No. 7 attained the age of 45 years on 23.08.2009.

xiii. The recommendation of the Departmental Promotion Committee (DPC) in its meeting conducted on 11.12.2012 was considered by the Municipal Corporation in its General Body Meeting held on 17.01.2013, wherein the petitioner, despite passing the departmental examination, was not considered for the promotion.

xiv. Respondent No. 6 was granted promotion as Dy. Engineer based on his attaining the age of 45 years which is prior to the petitioner passing the examination.

xv. Respondent No. 7 was granted promotion as Dy. Engineer w.e.f. 22.02.2013 by virtue of the resolution passed by the General Body Meeting dated 27.02.2013.

xvi. Though the petitioner passed the said exam before Respondent No. 7 completed 45 years of age thereby being eligible for promotion by default, was not considered for promotion.

5. The Respondent Corporation has filed affidavits in reply dated 15.07.2013

through Mr. Anant Gajanan Jantre, Assistant Commissioner (Administration) and 11.04.2017. It is contended that considering the vacancies and the fact that Respondent Nos. 6 and 7 have completed 45 years of age, they were exempted from the examination and hence, they were promoted. It is further stated that though the petitioner has passed his examination, he was not eligible for promotion and there was no illegality committed by the Corporation in ignoring his claim. To say the least, we are unable to be convinced by such submissions and the said contents of the affidavits. We find that the affidavits putforth an incorrect picture before us.

6. The Municipal Corporation by its communication dated 02.09.2015 had addressed the Additional Secretary, Department of Town Planning, by which a query was raised as to what would be the position interse between those candidates who have passed the departmental promotion examination and those who have failed in the said exam but have completed 45 years of age. The State of Maharashtra, by its communication dated 03.11.2015 had categorically informed the Commissioner of the Municipal Corporation, Respondent herein, that those persons who did not pass the qualifying examination would lose their seniority vis-a-vis those candidates who have passed the examination. In paragraphs 2 and 3 of the communication it is specifically stated that after completing 45 years of age, such candidates who have lost their seniority for having not passed the examination, would not regain their seniority any time in future.

7. We find that this communication dated 03.11.2015 was an eye opener for the Municipal Corporation which, in our considered view, has been conveniently ignored by the Corporation for the reasons best known to them. By this communication, the policy of the State is reiterated that the persons who would pass the qualifying examination should be promptly placed higher in seniority over those candidates who have not passed such examinations.

8. The situation is quite disturbing and appalling. On the one hand, the State has introduced a laudable scheme by which hard working and meritorious candidates are sought to be selected for promotion after passing the promotion exams. On the other hand, government instrumentalities like the Respondent No.1 Corporation, are scuttling such policies by suppressing candidates like the Petitioner who has passed the qualifying exam on 05.01.2009. For the last about 8 years, the Corporation has denied the Petitioner his legal right. Adding insult to injury, the Corporation has, with impunity, promoted those candidates who have either failed in the said exam or have conspicuously refrained from even attempting the said exams.

9. We are informed that neither Respondent No. 6 nor Respondent No. 7 ever attempted such an examination and have conveniently kept themselves away from the said examination. We strongly deprecate the conduct of the Corporation which has leaned towards such candidates who have never attempted such examination and only because they have completed 45 years of age, preference

has been given to them as against those worthy candidates who have passed the said examination. In the light of the above, this petition deserves to be allowed and the claim of the petitioner for promotion as Dy. Engineer from the deemed date i.e. 22.02.2013 needs to be accepted.

10. It is contended by the learned counsel for the Corporation that the petitioner should be placed below Respondent Nos. 6 and 7 in the seniority list as the said Respondents have completed 45 years of age. It would not detain us even for a minute to reject this contention of the learned counsel to the extent of Respondent No. 7, keeping in view that the Petitioner has passed his qualifying examination on 05.01.2009 after Respondent No. 6 attained the age of 45 years on 30.03.2008. Respondent No. 7 attained 45 years of age on 23.08.2009 which is after the Petitioner passed the said exam. We, therefore, deem it proper to place the Petitioner above Respondent No. 7 Sanjay A. Patil in seniority.

11. This petition is, therefore, allowed. The impugned decision of the Corporation dated 17.01.2013 and 27.02.2013 along with the impugned order dated 19.10.2016 to the extent of ignoring the claim of the Petitioner are set aside. The Petitioner shall, therefore, be deemed to have been promoted as Dy. Engineer w.e.f. 22.02.2013 which is the date of promotion granted to Respondent Nos. 6 and 7. Consequentially, the petitioner would be placed below Respondent No. 6 in seniority and above Respondent No. 7.

12. Needless to state that the Petitioner would be entitled to all monetary benefits flowing from the said promotion w.e.f. 22.02.2013.

13. Rule is made absolute in the above terms.