

(2010) 01 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 1434 of 2009

Shriniwas

APPELLANT

Vs

Zilla Parishad, Chandrapur and another

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Citation : (2010) 125 FLR 927

Hon'ble Judges : P.B. Varale, J;A.H. Joshi, J

Bench : Division Bench

Advocate : P.D. Meghe, for the Appellant; M.M. Sudame and O.D. Kakde, A.G.P., for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard finally by consent of parties. Respective Advocates waive service.

Petitioner herein was appointed as a Muster Clerk in the employment of respondent No. 1, and after completing about thirty years of service, has retired from the said post on 31st March, 2003.

2. Government of Maharashtra has issued a policy decision on 20th May, 1999, a copy whereof is at Annexure-B.

3. By said Govt. decision dated 20th May, 1999 [Annexure-B], Govt., has created a cadre titled as "Civil Engineering Assistant" with pay-scale of Rs. 1200-1800/"-, and created 406 posts in each year from May, 2000 to May, 2004.

4. Admittedly, by Govt. decision dated 7th November, 2001, Government proposed and prescribed two and half months' training to unqualified employees for considering them for grant of absorption in the cadre of Civil Engineering Assistant.

5. Government has distributed these posts to different establishments of Zilla Parishads in the State through its Circular dated 29th July, 2003. 76 posts came to be allotted to Chandrapur,

6. In the meantime, i.e. before giving effect to policy decision of the Government, the petitioner has attained age of superannuation, and has been superannuated.

7. Government of Maharashtra has also adopted a policy decision of relaxing the qualification and condition of undergoing training to those who have crossed 45 years of age, and that such employees should apply for exemption. It is contended by the petitioner and admitted by respondents that such policy exists.

8. Admittedly, the petitioner has retired in 2003. It is obvious that on the date when the posts were allotted to various districts, the petitioner had already crossed 45 years of age.

Admittedly, no facility was, and could have been made available to the petitioner and similarly placed personnel for undergoing the training, till the year of retirement, i.e., 2003, as said policy decision is later in time.

9. Much after the retirement of petitioner, by order dated 12th February, 2008, the respondent No. 1 has promoted 44 employees giving them different higher pay-scales retrospectively.

10. It is seen from the List, which is a part of order at Annexure-J [page Nos. 37 to 40] that 24 amongst those who have been granted the pay-scale were appointed after petitioner's appointment. All such employees have been given the pay-scale of Rs. 1200- 2040A from 1st October, 1994, and on later dates as per eligibility. Similarly, pay-scale of Rs. 1640-2900/- is also given to 23 persons amongst them who all are juniors to petitioner by about seven years, however, the petitioner has not been granted the said scale, and his name is not included in Annexure. J.

11. Due to the feeling of injustice, the Petitioner issued a notice to the Respondent No. 1. The notice has been replied by the respondent No. 1 stating reasons, namely:--

[a] The petitioner does not possess required qualification, and;

[b] He was not in employment due to superannuation; the benefit of higher pay-scale has not been granted to the petitioner.

12. By present petition, petitioner is claiming the scale of pay from 1st October, 1994 and arrears and all consequential benefits.

13. Petition has been opposed by filing affidavit raising three grounds, which are averred in para 4 of the reply/which portion is quoted as follows:--

4...

[a] The petitioner having been already retired prior to introduction of this scheme and not having been absorbed in the cadre of Civil Engineering Assistants due to non-implementation of scheme by that time cannot be granted pay scale of Asstt. Engineer.

[b] Moreover, the petitioner was not qualified employee as per G.R. Dated 20.5.1999 and therefore, he was not absorbed on the post of Civil Engineering Assistant.

[c] The Government notification dated 2.2.2006 has issued Recruitment Rules for the post of Civil Engineering Assistant which require an employee to undergo 2-1/2 months training under I.T.I. and the employees who have completed 45 years of age can be granted relaxation from passing the examination by, competent authority....

[Quoted from page No. 47 of the Writ Petition paperbook. Paragraph numbers are given for identification and convenience while reading].

14. This Court has, after hearing both the sides, tested the submissions.

15. It is seen that the higher scales of pay granted by the Govt., were to be awarded to eligible personnel on phased basis" The higher post and pay-scale have been given to the persons named in the order [Annexure-J] from 1st October, 1994, who, according to respondent No. 1, were eligible, and were denied to the petitioner due to superannuation etc.

16. Zilla Parishad has not explained as to how the petitioner, who was employed in 1963, could not be eligible to get the benefit after crossing 45 years of age if he was not possessing the qualification, in comparison with those to whom the benefit has been given, who were similarly placed, by granting relaxation in qualification as permissible under policy decision of the Government.

17. It is not explained as to with reference to which date the petitioner was not qualified. It is also not explained as to which amongst those candidates to whom the benefit is granted, is granted after relaxing the qualification in view of Clause [c] quoted in para 14 (now 13) above, and as to how same cannot be done for the petitioner.

18. In these premises, this Court finds that the petitioner is denied the benefit without application of mind and without objectively assessing his case and by assigning the reason which is irrelevant and untenable.

19. The action of respondent No. 1, which is impugned, is liable to be deprecated, and corrective measures and actions are required to be taken, to undo the injustice caused to the petitioner.

20. In the result, this Court orders as follows:--

(I) The declinment of Respondent No. 1 of petitioner"s candidature as is expressed through the Affidavit-in-Reply is struck down as unjustified.

(II) Respondent No. 1 is directed to consider the case of the petitioner:

(a) By ignoring the fact of:--

[i] retirement, and

[ii] lack of qualification of the petitioner.

(b) consider the case of the petitioner based on eligibility of the petitioner for relaxation of qualification on the basis that on the relevant date, the petitioner has already crossed 45 years of age.

1. [III] The petitioner be granted the benefit of scale of pay given to any one amongst the juniors to the petitioner to whom the benefit is given through the order dated (12th February, 2008 [Annexure-J to the petition], and should be given to all and same benefits as given to such junior candidate who is similarly placed, and was given the benefit only because he was in the employment on the date of passing of order or allotment of posts.

21. We make the Rule absolute in terms of para 21 foregoing. In the circumstances, parties are directed to bear their own costs.