

(2007) 01 BOM CK 0091
In the Bombay High Court
Case No : Writ Petition No. 668 of 1996

S.K. Tiwari and others	Vs	APPELLANT
Chief Executive Officer, Zilla Parishad, Bhandara and others		RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 2 BomCR 773 : (2007) 3 MhLj 320

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : N.R. Saboo, for the Appellant; V.A. Thakre, Asstt. Government Pleader for respondent No. 2 and None for respondent Nos. 1, 3 and 4, for the Respondent

Judgement

A.H. Joshi, J.—Petitioners are six amongst eighteen employees of Zilla Parishad, Bhandara, who were working as Attendants in various Departments of Zilla Parishad, and were promoted as Junior Assistants by order dated 21st December, 1990.

2. Present Respondent Nos. 3 and 4 preferred appeal before the Divisional Commissioner, Nagpur, against the order promoting sixteen persons. The appeal was admitted, and finally decided by Order dated 30th September, 1992, and was allowed. The Divisional Commissioner held that the promotion order was issued by Chief Executive Officer, Zilla Parishad, Bhandara, in violation of rules and procedure prescribed. He directed that based on the consolidated Seniority List of Class-TV employees of Zilla Parishad, the promotions be given as per seniority and qualification laid down by rules and the procedure prescribed by Government. The promotions be given by assigning retrospective effect, but no employee shall be entitled to receive any amount by way of arrears. He also directed that while filling eighteen Clerical posts, it should be noted that only 25 per cent posts shall be filled by promotion and for remaining vacancies, the Selection Board will have to be contacted.

3. This order is under challenge in this petition.

4. The grounds of challenge as urged in the petition and urged before this Court are :-

(a) The respondent Nos. 3 and 4 did not implead the petitioners as party to the appeal, although their promotions were challenged before the respondent-Commissioner. That, the respondent-Commissioner also without hearing the petitioners as well as other employees who were promoted in pursuance of the order dated 21-12-1990 by the impugned order dated 30-9-1992 allowed the appeal.

(b) The order passed by the Commissioner is violative of Article 14 of the Constitution of India.

(c) The posts of Laboratory Attendant and Attendant Grade-I are entirely different posts and having different pay-scales.

(d) The post of Laboratory Attendant got the revised pay-scale of Rs. 950-1400/- and thus cannot be said that the promotional order in Class-III will be only Rs. 950-1500/-.

(e) For the post of Laboratory Attendant, the minimum qualification is SSC with science and maths subjects. However, for the post of Attendant (Grade-I), the candidate possessing IVth Standard Certificate is also eligible for the appointment. It is from this category a promotional post was given in the Junior Clerk and Junior Assistant who possess SSC Certificates.

(f) The employee who passed SSC Certificate and are continued as Attendants (Grade-I) get only pay-scale of Rs. 750-940/-. However, at the same time, the employees, who are working as Laboratory Attendant having SCC Certificate, get basic pay-scale of Rs. 950-1400/-. If both the posts - Laboratory Attendant and Attendant (Grade-I) are kept in combined seniority list then it will be against the provisions of natural justice.

(g) There will be a discrimination between the Attendant (Grade-I) having SSC Certificate and Laboratory Attendant and as such both the posts, namely Laboratory Attendant and Attendant (Grade-I) are two different posts and cannot be clubbed in one seniority list. This results in treating those equal who are not equally or similarly placed.

(h) There are incidences in the respondent-Zilla Parishad that the employees working on the post of Attendant in Grade-I, though transferred in the school were granted only pay-scale of Rs. 750-940/-. Although he was working with the Laboratory Attendant, he was not paid the said salary and as such it is clear that the respondent-Zilla Parishad right from inception treated both the posts of Attendant and Laboratory Attendant differently.

(i) In view of the Amendment Rules 1992, by which the Maharashtra Zilla Parishad District Services (Recruitment) Rules were amended, it is clear that

Govt. Circulars dated 17th September, 1987, 26th January, 1988, 19th July, 1991 and 16th October, 1964 as relied by Respondent Nos. 3 and 4 cannot be the basis to decide promotional channel of Attendant Grade-I and Lab. Attendant.

(j) For the post of Laboratory Attendant promotional channel is Laboratory Assistants and not Junior Assistant.

(k) In view of the amendment of 1992, post of Laboratory Attendant vis-a-vis Attendant - Grade-I got different channel of promotion are very much clear and there cannot be any ambiguity as regards their proper promotional channel in their services.

5. It is pertinent to note that the post of Junior Assistant is found in Appendix-IX at Entry No. 5. This Entry No. 5 is quoted for ready reference as below :-

5.

District service (Class III) (Subordinate Ministerial) Grade I.

(i) Junior Asstt.

(ii) Store Asstt.

(iii) Storekeeper

(iv) Computer

(1) Appointment shall be made either --

(a) by promotion of --

(i) deleted

(ii) suitable member of District Services (Class IV) of Zilla Parishad who has passed Secondary School Certificate or equivalent Examination and have put in 3 years of continuous service in District Service (Class IV).....

6. This Court has given peaceful and anxious consideration to submissions of the petitioners and that of the State. The Zilla Parishad had supported the petitioners, while contesting respondents have not appeared, though served.

7. This Court finds that the rule quoted above in Para 5 does not incorporate any exclusion of Laboratory Attendants from being considered.

8. It is illegal and shall be unreasonable to hold that just because an employee was holding higher qualification, he was appointed in higher pay-scale in Class-FV category, he should be rendered ineligible for promotion to Class-III post of Junior Assistant. If this argument is accepted, it will result in denial of all further avenues to such incumbents which commence from the post of Junior Assistant.

9. A person, who was possessing better qualification of eligibility even for higher post, cannot be denied opportunity on the ground that he has some other channel of promotion as well.

10. The fact cannot be lost sight that opening sentence of Promotion Order (Exh.A) dated 21st December, 1990 states and declares to "all appointees shall note that the subject promotion was granted without prejudice to rights of all others." This has resulted in giving to the petitioners sufficient notice of interest of others who were adversely affected due to the promotion of the petitioners.

11. This Court finds that while it is apparent that there is no rule prohibiting or excluding the class of employees holding the post of Laboratory Attendant, reading such exclusion amounts to infusing a clause of "exclusion from consideration." Such clause is a conscious legislative act. None can supplant it.

12. It is further worth noting that the Commissioner had found that the mandate of 75 per cent quota to be filled by direct recruitment and 25 per cent to be by promotion also was disregarded. When overall violation was noted by Divisional Commissioner, he was constrained to order rectification. It is not a case where regular and substantive appointment was under challenge.

13. Therefore, petitioners, who had wrongly superseded the respondent Nos. 3 and 4, cannot now be heard to say that they were not heard by the Divisional Commissioner. Petitioners knew that their appointment was temporary and without prejudice to rights of other eligible employees in Class-IV category.

14. Petitioners had received something fortuitously, which is rightly lost.

15. Petitioners have, therefore, failed to make out a case for interference. Rule is discharged. Parties shall bear respective costs.