

MAHARASHTRA POLLUTION CONTROL BOARD

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By R.P.A.D./Fax/Hand Delivery

No. BO/P&L Div-I/B- 4959

Date 12/9/2011


To,

✓ The Asstt. System Officer,  
Maharashtra Pollution Control Board  
Mumbai.

Sub. :- Order passed by Hon'ble High Court in  
Civil Appellate Jurisdiction  
W.P. No. 466/1994 filed by  
Shri. Tryambak Dhondiba Chavan  
V/s  
The State of Maharashtra & Ors.  
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Please find enclosed herewith a note giving brief background of the above matter and an order passed by Hon'ble High Court in above Writ Petition, for placing the same on the website of the Board by giving separate link - "Service Matters : Important Decisions".

This is for your information and further line of action. A brief note and copy of the order is enclosed herewith.



( Vaishali Sadhale )  
Asstt. Law Officer

Encl. : As above

Copy submitted to : Sr. Law Officer, MPCB, Mumbai - for information

**MAHARASHTRA POLLUTION CONTROL BOARD**  
**Policy & Law Division**

**Note in respect of the applicability of the Regulations made by the  
State Pollution Control Board**

During the discussions with the Hon'ble Chairman alongwith the Sr.Administrative Officer on 24/08/2011 in respect of the case of promotion of Shri Sunil Waghulikar, PS to Chairman, MPCB, it was decided that the issue regarding the applicability of the Regulations framed by the Maharashtra Pollution Control Board in respect of the method of recruitment and the terms & conditions of service (including the scales of pay) of the officers (other than the Member Secretary) and other employees of the Board shall be examined and put up.

This office has examined the issue with reference to the order dtd.4/2/2003 passed by the Hon'ble High Court of Judicature at Mumbai in the Writ Petition No.466/1994 filed by Shri Trimbak Dhondiba Chavan v/s State of Maharashtra and Ors. including the Maharashtra Pollution Control Board and one Shri P.B. Brahme, the then First Clerk working with the Maharashtra Pollution Control Board.

The contention raised in the said petition by the petitioners was that Shri P.B. Brahme, the Respondent NO.3 was not qualified to be promoted and his promotion to the said post is illegal, rather the petitioner was fulfilling the eligibility for promotion to the post of Store Superintendent and therefore, his case is ought to have been considered at that time. The main objection was that in the 95<sup>th</sup> meeting of the Board draft Regulations were framed under Section 12 of the Water (Prevention & Control of Pollution) Act, 1974 and u/s 14 of the Air (Prevention & Control of Pollution) Act, 1981, which were sent for the approval of the State Government and until the draft Rules were approved, the Board applied the criteria for promotion prescribed under the Draft Rules, which were resolved by them.

After going through the record and after hearing all the concerned, Hon'ble High Court specifically observed that :

"In the interregnum, until the draft Rules were approved by the State Government, if the Board applied the criteria for promotion prescribed under the draft Rules, which were resolved by them, no illegality can be found. For want of the Rules having been approved by the State Government, the Board was not deprived of making promotion to the vacant post on the basis of draft Rules, which were resolved by them. It is, permissible in law for an employer to proceed on the basis of draft Rules or instructions or guidelines in the matters relating to recruitment and promotion unless statutory Rules come into force because that would obviate arbitrariness and discrimination. In this view of the matter, the promotion to the post of Store Superintendent based on draft Rules cannot be said to suffer from legal infirmity."

In view of the above observations, once Regulations are framed by the employer, unless statutory Rules are repugnant to the said Regulations including creation of posts, those are enforceable and such Regulations can not be said to suffer from legal infirmity. A copy of the order dtd.4/2/2003 duly earmarked portion is enclosed for ready reference.

7/11/2011  
Place on  
website it  
giving Link - Service Matters  
Imp Decisions  
4/2/03

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.466 OF 1994

Shri Tryambak Dhondiba Chavan  
r/o. Balaseth's Chawl, Room No.5,  
behind Mahadeo Temple, Anand  
Nagar, Kalwa (E), Thane

... Petitioner

V/s.

1. The State of Maharashtra  
through the Secretary  
Deptt. of Environment,  
having office at Mantralaya  
Bombay - 32

2. The Maharashtra Pollution  
Control Board, Bombay having  
office at Chhatrapati Shivaji  
Maharaj Municipal Market Bldg.  
4th floor, Mata Ramabai Ambedkar  
Marg, Bombay-1

3. Shri P.B. Bramhe  
working as First Clerk  
in Maharashtra Pollution Control  
Board, Accounts Section, having  
office at Chhatrapati Shivaji  
Maharaj Municipal Market Bldg.  
4th floor, Mata Ramabai Ambedkar  
Marg, Bombay-1

... Respondents

Mr.N.V. Bandiwadekar for Petitioner  
Mr.S.R. Nargolkar, AGP, for Respondent No.1

Coram: Shri R.M. Lodha &  
Smt.Nishita Mhatre, JJ.

Dated: February 4, 2003

ORAL JUDGMENT (PER R.M. LODHA, J.):

Heard Mr.Bandiwadekar, learned Counsel appearing  
for Petitioner and perused the writ Petition, the  
documents annexed thereto, the reply affidavits filed by  
Respondent No.2 and Petitioner's affidavit in rejoinder.

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2. The controversy in the Writ Petition relates to the promotion of Respondent No.3 - Shri P.D. Brahme to the post of Store Superintendent. According to the Petitioner, Respondent No.3 was not qualified to be promoted and his promotion to the said post is illegal, and rather fulfilled the eligibility for promotion to the post of Store Superintendent and, therefore, his case ought to have been considered accordingly.

3. Mr. Bandiwadekar, learned counsel for the Petitioner, heavily relied upon the office note of May, 1992 and submitted that the eligibility for promotion to the post of Store Superintendent was B.Sc. and passing of written and oral examination. The learned counsel submitted that Respondent No.3 is not B.Sc. nor any written and oral examination was conducted before promoting him to the post of Store Superintendent. He submitted that Draft Rules having not been approved by the government, could not be acted upon.

4. Justifying the promotion of Respondent No.3 to the post of Store Superintendent, Respondent No.2 has set up the case that the post of Head Accountant/Inspector of Store ~/ Senior Auditor / Office Superintendent/ Store Superintendent are equal in scales and are considered in one group and as such the post of Store-Superintendent is not isolated and, therefore, reservation applies to the post of Store Superintendent. It is submitted that

as per the draft rules dated 28.7.1992, Respondent No.3 fulfilled the eligibility and has been promoted against reservation.

5. We reflected over the matter and in our view, reliance placed by the Petitioner on the office note of May, 1992 is wholly misconceived. The office note of May, 1992 is with reference to the representation made by one S.R. Banate, Senior Clerk requesting that his case be considered for promotion to the post of Store Superintendent. Dealing with the said representation, the Law Officer gave opinion by observing that the Educational qualification required for the post was B.Sc but the Board was prepared to propose relaxation from the said educational qualifications and, therefore, the case of Shri S.R. Banate be considered in the light of his work in confidential reports. The submission of Law Officer was not accepted by the Chief Accounts Officer in the said note and it was observed that the Board has not given approval for relaxation of educational qualification and the resolution is passed to conduct written and oral examination and then appointment may be made to the post of Store Superintendent. Admittedly, as per the office note Shri Banate, on whose application/representation the said note was made by the Law Officer and the Chief Accounts Officer, was not promoted. Thereafter, in the 95th meeting, the Board framed draft regulations under section 12 of the Water

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(Prevention and Control of Pollution) Act, 1974 and section 14 of Air (Prevention and Control of Pollution) Act, 1981. The said draft Rules framed on 28.7.1992 were to be sent for approval to the State Government. The said Rules provided the criteria for promotion to the post of Stores Superintendent by making following provisions:

- "(a) by promotion of a suitable person on the basis of 'Seniority subject to fitness' from amongst persons holding the post of 'First Clerk' subject to following -
- (i) Candidate should have a minimum 5 years of regular service in that post; and
- (ii) Candidate should qualify in test, if any, prescribed by the Board."

5. Even if the said draft Rules were pending approval before the State, the resolution having been passed by the Board on 28.7.1992 framing such Rules, the earlier Resolutions dealing with the subject had lost its significance. In the interregnum, until the draft Rules were approved by the State Government, if the Board applied the criteria for promotion prescribed under the draft Rules which were resolved by them, no illegality can be found. For want of the Rules having been approved by the State Government, the Board was not deprived of making promotion to the vacant post on the basis of draft Rules which were resolved by them. It is permissible in law for an employer to proceed on the basis of draft Rules or instructions or guidelines in

the matters relating to recruitment and promotion unless statutory Rules come into force because that would obviate arbitrariness and discrimination. In this view of the matter, the promotion to the post of Store Superintendent based on draft Rules cannot be said to suffer from legal infirmity. It is not the case of the Petitioner that Respondent No.3 even does not fulfill the criteria of eligibility as prescribed under the draft Rules. The Board (Respondent No.2) has specifically set up the case that Respondent No.3 fulfills the eligibility of five years' experience as provided in the draft Rules and having been found fit and suitable for promotion, Respondent No.3 has been promoted to the post of Store Superintendent against the reservation.

8. Writ Petition has no merit and is dismissed accordingly. Rule is discharged. No costs.

TRUE COPY

DEPUTY REGISTRAR  
HIGH COURT, APPELLATE 8100  
BOMBAY 400 032

125/137/03  
JMF  
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