

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(Arising out of SLP (C) No.4871/2009)

Baswant Shankarappa Swami

.. Appellant

Versus

State of Maharashtra & Ors.

.. Respondents

JUDGEMENT

R.M. LODHA, J.

Leave granted

2. This appeal by special leave is directed against the judgment and order dated November 21, 2008 passed by the High Court of Judicature at Bombay whereby the writ petition filed by the present appellant was dismissed and the judgment dated

November 26, 2007 passed by the Maharashtra Administrative Tribunal (for short 'the Tribunal') has been upheld.

3. The appellant is a Graduate Engineer (Civil). He was selected and nominated by the Maharashtra Public Service Commission (for short 'the commission') as Assistant Executive Engineer Class I in the Maharashtra Service of Engineers (Group A) in the Irrigation Department on September 11, 1989. The appellant was promoted as Executive Engineer, a Class I post, vide office order dated September 7, 1993. On March 1, 1996 the Governor of Maharashtra made the rules called the Superintending Engineer (Civil) in the Maharashtra Service of Engineers Group A, in the Irrigation Department (Recruitment Rules), 1996 (for short 'the Rules'). Rules 2 and 4 thereof came into force on the date of publication of the notification in the official gazette while as regards rule 3, it was provided that it shall come into force on such date as may be notified by the State Government in consultation with the Commission. On September 30, 1999, a notification came to be issued declaring March 1, 2001 to be date for coming into force of rule 3. According to the appellant, although he completed 7 years on the post of Executive Engineer (Civil) in the month of September

2000 and his juniors in the cadre of Executive Engineer were promoted to the post of Superintending Engineer in 2005 but he was denied promotion having not gained experience in any one or more of the branches from each of the groups provided in rule 3. The appellant constrained thereby approached the Tribunal under Section 19 of the Maharashtra Administrative Tribunals Act, 1985 for redressal of his grievance. The appellant challenged the constitutional validity of rule 3 before the Tribunal being arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India.

4. The Tribunal vide its judgment dated November 26, 2007 held rule 3 intra vires by considering the matter thus:

“.....Having noted the contention raised by the applicant in the Original Application, we do not find any merit or substance put forth by the applicant to the challenge to the vires of the Rule 3 of the Rules. We accordingly hold that Rule 3 being intra vires and do not contravene either Article 14 or 16 of the Constitution of India...
.....”

5. Not satisfied with the judgment of the Tribunal, the appellant filed a writ petition under Article 226 of the Constitution before the High Court of Judicature at Bombay and put in issue

specifically the correctness of the Tribunal's view and set up the ground that rule 3 was ultra vires the Constitution.

6. The High Court observed that neither before the Tribunal nor before them, it had been substantiated as to how rule 3 was ultra vires the Constitution and, accordingly, dismissed the writ petition.

7. It is pertinent to notice that in the original application before the Tribunal, while challenging the constitutional validity of rule 3, the appellant set up the grounds thus:

“.....that the ‘said rule’ is ultra vires the constitutional mandate of equality before law and equal opportunity in Government Service as provided by Article 14 and Article 16 of the Constitution of India. The Rule 3 bestows unfettered powers upon the Respondents in the matter of promotions to the post of Superintending Engineer and is unreasonable, arbitrary and discriminatory. It is also incongruous and contradictory to the proviso to Rule 2 which provides for relaxation of 2 years of service in the feeder cadre out of 7 years service thereby making Rule 3 absurd, which mandates total of 6 years of service with 3 years service in each of Group (a) and (b). The Rule 3 is further discriminatory as the classification of Executive Engineers, a homogenous group, into two unequal and artificial classes totally at the mercy of the respondents who have absolute power to post or not to post an employee to a particular Group (a) or (b) post.

.....The Rule 3 provides that an Executive Engineer in the Irrigation Department shall have “gained an experience of not less than 3 years in any one or more of the branches from each of the following two groups, namely:

- (a) (i) research, (ii) designs, (iii) project preparation (iv) investigation or (v) training work.
- (b) (i) Construction or (ii) Management.

However it does not provide for a situation where an eligible Executive Engineer is not posted to either Group (a) or Group (b) or for reasons of non-availability of the posts. The said Rule therefore is arbitrary, unreasonable and bestows unfettered power in the Respondents in the matter of promotions by posting or not posting a particular Executive Engineer to either of the groups.

As a matter of fact, this rule is incongruous, contradictory and unreasonable on the back drop of proviso to Rule 2 which provides that where sufficient persons having held the posts of Executive Engineer (Civil) for a period of not less than 7 years as aforesaid are not available to fill up the vacancies, then the requirement of the such service of 7 years may be relaxed, so however that such relaxation shall not be by more than 2 years. It is evident that if an Executive Engineer is to be promoted according to this proviso, he puts a maximum service of 5 years and undisputedly cannot comply with the provisions of Rule 3 which lays down a total of 6 years experience, 3 years each in Group A and Group B posts."

8. The High Court has practically given no reasons as to why contention raised by the writ petitioner (appellant herein) in challenging the vires of rule 3 did not merit acceptance except saying that it has not been substantiated as to how rule 3 was ultra vires the Constitution. The consideration of the issue by the High Court concerning vires of rule 3 is far from satisfactory. On a short ground of non-recording of reasons and non-consideration of the contentions raised by the appellant in challenging the constitutional validity of rule 3, in our view, the appeal has to be allowed and matter deserves to be sent back to the High Court for consideration afresh.

9. The appeal is, accordingly, allowed to the aforesaid extent. Writ Petition No. 6812/2008 is restored on the file of the High Court for its fresh consideration. No order as to costs.

.....J.
(B. Sudershan Reddy)

.....J.
(R.M. Lodha)

New Delhi,

October 9, 2009