

Bhagwanrao s/o. Harisingh Shirs  
& 5 others

versus

The Maharashtra Pollution Control  
Board, Bombay, & another.

.. Petitioners/  
Respondents in  
Civil Application.

.. Respondents/  
No.1 - Applicant  
in Civil Applica-  
-tion & No.2 -  
original  
respondent.

Shri D.R. Shelke, Advocate, holding  
for Mrs. Lata Bade, Advocate, for  
Applicant/original respondent no.1.

Shri V.J. Dixit, Advocate, for  
respondents/original petitioners.

Shri S.K. Kadam, Assistant Government  
Pleader, for respondent - State.

CORAM : N.P. CHAPALGAONKAR &  
V.K. BARDE, JJ.

February 7th, 1996.

COURT'S ORDER :

(1) We have passed interim orders on 22nd  
January 1996. A motion by the respondent - Board  
points out that the Board wants to recruit Field  
Officers by nomination. Because of the interim  
orders of this Court, Board is not able to proceed  
with the selection process. Since the pollution  
laws are to be implemented effectively, recruitment  
to these posts is very much necessary.

(2) We have heard the parties at length.  
and pass following interim orders :

(1) The post of the Field Assistant occupied  
by the present incumbents will not be abolished  
so long as they continue in office. However,  
if by death, resignation, promotion or transfer  
to other cadre with his consent, the post of  
Field Assistant becomes vacant, then such posts  
may be abolished.

(ii) The present post of Field Inspectors  
which are eight in numbers, shall not be abolished  
until further orders of this Court.

(3) The Counsel for the respondent - Board  
makes a statement that further promotion to the  
post of Field Inspector in respect of all Field  
Assistants having ten years' experience in that  
cadre will be considered irrespective of their  
education qualifications. We are also told  
that five promotions have already been given  
and the three vacant posts shall also be filled  
in as and when the qualified candidates from  
the Field Assistants are available and these  
posts will not be either abolished or filled  
in by some other method.

(4) So far as the promotion to the Field  
Officers is concerned, the recruitment rules  
which are annexed to the affidavit of



Shri Gajanan Rane and are at page 121 of the compilation will govern the <sup>field</sup> ~~rules~~. The rules lay down that these posts shall be first filled in by the departmental candidates if they are available and if they are not available, then by direct recruitment. Therefore, if the persons working in the lower cadre i.e. Field Inspectors with a minimum experience of five years in that cadre are available who have a degree in Engineering or its equivalent from a recognized University or Institution to their credit or a post-graduate degree in Environmental Science from a recognized University, then they shall be first promoted unless there are serious adverse remarks to their record and after this, the rest of the post of the Field Officers shall be filled in by direct recruitment calling names of the suitable candidates from the Employment Exchange and other similar agencies like District Social Welfare Officers and Tribal Welfare Officers so far as the candidates belonging to Scheduled Caste and Scheduled Tribes are concerned who have registered their names with these agencies. Besides this, an advertisement shall be published at every regional centre of the Board in Marathi in a <sup>daily</sup> newspaper published from that City having wide circulation. The proposed amended rules which have been submitted to us along with the



(4)

affidavit of Shri Dnyandeo Bharti shall not take effect so far as this recruitment is concerned until further orders of this Court.

(5) Technically since the Field Officers posts are not gazetted posts, they are Class-III posts according to the classification in force in the said services, but since the pay scale prescribed is Rs. 1,640-2,900 and since the qualifications required are graduate in Engineering or equivalent or post-graduate in Environmental Science, we feel that the recruitment should be by a committee <sup>on</sup> of which experts outside the Board are present which would facilitate the Board Officers to select the right personnel. We, therefore, direct that the selection committee shall consist, at least, one expert ~~man~~ in pollution control, not connected with the Board and one officer of the Indian Administrative Service to be nominated by the Secretary to the Department of Environment. We also hope that the committee will be a small committee consisting of not more than five or seven persons and will not be a crowded one which would make it difficult to make an objective selection. We do not wish to lay down a specific procedure for the recruitment. But we hope that looking to the limitation on the interviews, if the respondent - Board wants to conduct a written test for the candidates, they are not only permitted but it would be a most desirable process.

(5)

If the applicants are in very large number, the Board is authorised to short list the candidates by their performance in the written test and by their performance in the basic qualifications, such as, post-graduation or further degrees like doctoral research.

(6) We also direct that the Field Assistants shall be allowed to carry on their duties specified to them under the heading " Job Specifications " at pages 33 and 34 of the compilation of this petition.

(7)- The State Government may consider giving some more promotional post for the Field Assistant in the cadre of the Field Inspectors by making suitable rules.

( V.K. BARDE )  
JUDGE

( N.P. CHATARGAONKER )  
JUDGE



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 818/97

IN

W.P.No.2443/93

Bhagwanrao s/o Parisingh Shira & Ors. .. Petitioners  
Vs.

The Maharashtra State Pollution .. Respondents  
Control Board and Anr.

<sup>P.P. Shinde</sup>  
Shri V.J.Dixit, Advocate, for the Petitioner  
<sup>Dixit</sup>  
Shri D.R.Shelke, Advocate, for the Respondent no.1  
Shri A.M.Kanade, G.P. for respondent State.

CORAM : B.H.Marlapalle, & A.P.Shah, JJ.

DATE : May 6, 1997.

Per : Marlapalle, J.

The Original Petitioners are the employees of the Maharashtra State Pollution Control Board and they are presently working as Field Assistants. The Board had issued a G.R. dt. 11/6/1993 and a Circular dt. 29/7/1993, calling options of the Field Assistants i.e. petitioners for absorption in the clerical cadre. The petitioner had prayed for quashing the said G.R. dt. 11/6/1993 and the Circular dt. 29/7/1993 and they had also prayed for the stay of the G.R. dt. 11/6/1993. This Court passed an Order of statusquo on 20/8/1993 and by further order dt. 24/11/1993, the rule was issued with directions to continue the status-quo.

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By the G .R. dt. 11/6/1993, the Board had created various types of posts for implementing the Pollution Control Laws. The Board filed Civil Application No. 133/1995 in the present petition praying for vacation of the rule of statusquo or to modify the same restricting its application only to the post of Field Assistant. The Board filed another Civil Application No. 1920/1995 for allowing the Board to fill in vacancies in the post of Field Officer which is the feeder post for the technical cadre. After hearing all the parties concerned, this Court allowed the application and the Board was <sup>allowed to</sup> publish an advertisement for the post of Field Officer by order dt. 7/2/1996 and detailed procedure for the filling up the vacancies in the post of Field Officer was laid down. In the said Order, full protection was granted to the service of the petitioners more particularly in para 6 of the said order.

In response to the advertisement, the Board received in all 1625 applications for the post of Field Officer and 683 applications were shortlisted for the interviews so that the Board could have a wider choice for selection of 82 candidates based on merits. However, out of 683 candidates shortlisted for the interview, only 470 candidates appeared for the interview at different centres viz. Nasik, Aurangabad, Pune & Nagpur.



Consequently, the merit list of 478 candidates based on the results of the interview conducted by the Selection Committee came to be prepared to fill in the post of Field Officer. Out of the said 478 candidates, only 15 candidates were found to be with the requisite qualification & relevant experience who could be appointed straight way in the post of Field Officer. However, the remaining 463 candidates did not possess the requisite qualification and relevant experience of four years though they had requisite qualifications and relevant experience of two years. The Board, therefore, prayed for relaxation of condition of experience of such wait listed candidates so as to fill in the post of Field Officer. The Board has, therefore, filed Civil Application No. 688/1996 and sought leave of this Court to relax the said condition of four years experience. However, no orders were passed on the said Civil Application.

The Board also submitted a draft of amendment in the existing rules of recruitment viz. Maharashtra State Pollution Control Board Employees (Recruitment) Rules, for approval by the Governor of Maharashtra, as required under Rule 12 (3) (a) (b) of the Maharashtra State Pollution Control Board and Maharashtra State Water Pollution Control Act 1974. By the said amendment, the Board had proposed to relax certain conditions prescribed for the recruitment and more particularly it has proposed that



for the post of Field Officer maximum 25 per cent seats will be filled in by promotions from the post of Field Inspector and the remaining post will be filled in from outside candidates by inviting applications. For such candidates, the higher age limit was increased from 28 to 35 years and the requirement of experience was totally deleted. By a letter dt. 6/1/1997, the Government has informed the Board that the said rules have been approved by the Government. It is thus clear that the amended recruitment rules are the rules framed under Article 309 of the Constitution of India.

The Board has filed the present Civil Application praying for liberty to fill in the remaining vacancies in the post of Field Officer by ~~direct~~ from amongst 463 waitlisted candidates as per the amended rules. Mr. Dixit a learned Advocate appearing for the original petitioners has opposed the Civil Application stating that the Board has failed to implement the earlier order passed by this Court on 7/2/1996, the amended rules are arbitrary & illegal, the Board has indulged in acts of giving a go-by to the orders passed by this Court and the prayer made by the present applicant Board is devoid of merits.

Mr. Dixit, learned Advocate for the original petitioners, doesn't dispute the fact that the amended recruitment rules have been approved by the Government of Maharashtra and they are the rules as framed under Article 309 of the Constitution of India, the Board has not been able to fill in the remaining vacancies in the post of Field Officers due to the



order of status quo granted by this Court and the petitioners do not have any immediate claim. Though Mr. Dixit contended that he proposes to challenge the amended the amended recruitment rules, admittedly as on today, there is no challenge to the said rules by the petitioners or any other employee of the Board. In addition, the Board is facing innumerable difficulties in performing its statutory duties due inadequate staff in the category of Field Officer. Shri Deshmukh, learned Counsel appearing for the Board has submitted a pursis in the present Civil Application stating that the Board has promoted five Field Assistants to the post of Field Inspector and the pay scale to the post of Field Assistant has been refixed to Rs. 1400 - 2400, which was earlier payable to the post of Field Inspector. This has been made effective in respect of 35 Field Assistants who have served for 12 years and above, in pursuance to the Government Resolution dt. 9/6/1995. Three Field Inspectors have been promoted to the post of Field Officer as per the amended recruitment rules and one vacancy in the post of Field Inspector has occurred and the same is going to be filled in by way of promotion from amongst the Field Assistants in due course of time. These actions have been taken <sup>by</sup> before the Board subsequent to the orders passed by this Court on 7/2/1996, contends Mr. Deshmukh, learned Counsel appearing for the Board.

In the facts & circumstances of the case, as narrated hereinabove, public interest demands that the Board is allowed to proceed further to fill in remaining vacancies in the post of field officers



without causing prejudice to the claim of the petitioners as at present or during the pendency of the main petition. By Order dt. 7/2/1996 this Court has given sufficient protection to the interest of the petitioners and has brought out in the pursis filed by the Board, some of the candidates in the post of Field Assistants and Field Inspector have already been promoted and 35 Field Assistants who have put in more than 12 years service have been granted the higher payscale of Rs. 1400 - 2400 payable to the post of Field Inspector. We are, therefore, of the considered view that the present Civil Application deserves to be allowed in terms of the following order :

- (1) The applicant - Board is allowed to fill in remaining post of Field Officers by following the amended recruitment rules which are more particularly called as Maharashtra State Pollution Control Board Employees Recruitment Regulation Rules 1996 and the order of status quo passed by this Court hereinbefore is modified to that extent.
- (2) However, for filling the remaining vacancies in the post of Field Officer, the Board will issue afresh advertisement in leading newspapers and will also notify the vacancies afresh to the Employment Exchanges as well as Employment Bureau in the Engineering Colleges/universities in the State of Maharashtra. This is necessary because the earlier advertisement issued by the Board for recruitment to the post of Field Officer had prescribed an experience of four years and now the said required



experience, under the amended rules has been totally removed. Similarly, the upper age limit has been increased from 28 to 35 years in the amended rules. There may have been number of candidates who did not fulfil the required qualification & experience of that advertisement but otherwise are eligible to apply to the post of Field Officer as per the amended recruitment rules which are relaxed. Such candidates should not be deprived of a chance of being considered to the post of Field Officer under the Board which is a public body.

- (3) The Board will prepare a merit list only in respect of the fresh candidates in pursuance of the fresh advertisement / notification and the claim of these waitlisted candidate, will be considered alongwith already waitlisted 463 candidates on the basis of inter se merit which means that a combined merit list will be prepared by the Board of the waitlisted 463 candidates and the freshly waitlisted candidates. Such an arrangement will not cause prejudice to any of the waitlisted candidates or the future applicants.
- (4) The Board shall strictly implement the orders passed by this Court on 7/2/1996, so far as the interests of Filed Assistants are concerned and more particularly directions issued in para 6 of the said order.

The Civil Application stands allowed in terms of the above order.

Date 6/5/97

for my registration

Prof. (C) ...  
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5/7/97 *[Signature]*