

PETITIONER:
SHESHRAO JANGLUJI BAGDE

Vs.

RESPONDENT:
BHAIYYA S/O GOVINDRAO KARALE AND ORS.

DATE OF JUDGMENT 18/09/1990

BENCH:
RAMASWAMI, V. (J) II
BENCH:
RAMASWAMI, V. (J) II
PUNCHHI, M.M.

CITATION:
1991 AIR 76 1990 SCR Supl. (1) 521
1991 SCC Supl. (1) 367 JT 1990 (4) 515
1990 SCALE (2) 600

ACT:

Civil Services: Maharashtra Ground Water Service Class I (Recruitment) Rules, 1976: Rule 3(1)--Senior Geologists--Promotion as Deputy Director--Stipulated experience--Posterior to acquiring necessary educational qualification--Validity of.

HEADNOTE:

The appellant joined the Agricultural Department in 1963 with B.Sc. (Geology). Later, in 1979 he was promoted as Senior Geologist. In 1982 he passed his M.Sc. (Geology) and stood first in the University. Sometime in 1982 he was also holding additional charge as Deputy Director.

In 1983, the State Public Service Commission called for applications for direct recruitment of Deputy Director in the Ground Water Survey and Development Agency. The appellant applied in response to the said advertisement, but was not called for interview, on the ground that he did not possess the necessary qualification of 10 years practical experience after acquiring the post-graduate degree. Aggrieved, the appellant filed a Writ Petition before the High Court contending that educational qualification and experience are two independent requirements and have to be read disjunctively and the experience required need not be after possessing basic educational qualification. However, the High Court did not agree with the contention and dismissed the Writ Petition.

Against the said dismissal, the appellant preferred an appeal by special leave which was granted, by this Court in 1984, with an observation that the petitioner should not be reverted. However, he was reverted to the post of Senior Geologist but subsequently promoted as Deputy Director in a new post created. The appellant's promotion was challenged by one of his colleagues by way of a Writ Petition contending that even for promotion, 10 years experience posterior to acquisition of post-graduate degree was essential. The High Court quashed the promotion of the appellant. The appellant appealed against the said order after obtaining special leave of this Court in 1987.

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During the pendency of these two appeals the State

Government amended Rule 3(1)(a) whereby the requirement of 10 years experience mentioned in sub-clause (iii) was deleted in respect of appointment by promotion. According to the State Government since the said requirement was redundant, it was deleted.

Allowing the 1987 appeal, and dismissing the 1984 appeal, this Court,

HELD: 1.1. On the interpretation of Rule 3 of Maharashtra Ground Water Service, Class I (Recruitment) Rules, 1976 prior to its amendment, the view taken by the High Court on the Writ Petition filed by the appellant, does not call for any interference. Normally when one talks of experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to posterior to the acquisition of the qualification. However, in the case of promotion the same interpretation may not be just or warranted. It would depend on the relevant provisions as also the particular type of experience which is required. [336C-D]

1.2. The requirement of experience has been omitted by an amendment made on 16th February, 1988 and published in the Gazette on 24.3.1988. Though the Rule does not say anything about its retrospective operation there could be no doubt that it is retroactive. This amendment shall be deemed to apply to the present case as well especially when the matter is pending in this Court and the appointment in question is by promotion. It is true that at the time when the appellant was promoted, the Rule had not been amended. However, the appellant is the senior most among the Senior Geologists and even if he is to be considered again under the amended rules he shall have to be appointed and nothing is stated in these proceedings which would disqualify him even now. [336E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2 166/87 & 2 146/84.

From the Judgment and Order dated 26.6. 1987 & 16.11. 1983 of the Bombay High Court in W.P. Nos. 2161/86 and 500 of 1983.

V.A. Bobde. R.N. Keshwani, A.G. Ratnaparkhi and S.D. Mudaliar for the Appellant.
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S.B. Bhasme, Dr. N.M. Ghatate, S.V. Deshpande and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. The interpretation of Rule 3 of the Maharashtra Ground Water Service, Class I (Recruitment) Rules, 1976 (hereinafter called 'the rule') arises for consideration in these appeals. That Rule related to the appointment to the post of a Deputy Director in Maharashtra Ground Water Service, Class I and the relevant portions of it as it stood in 1983 read as follows:

"3.(1) Appointment to the post of a Deputy Director in the Maharashtra Ground Water service Class 1 shall be made either--

(a) by promotion from amongst Senior Geologists in the Ground Water Surveys and Development Agency of Government, possessing the qualifications mentioned in sub-clauses (ii) and (iii) of Clause (c) of this sub rule;

(b) by transfer of a suitable officer from the Department of Geology and Mining of Government;

(c) by nomination from amongst the candidates who--
(i) unless already in the service of Government are not more than 45 years of age on the first day of the month in which the post is advertised, and
(ii) Possess a post graduate degree in Geology or Applied Geology of a recognised University or Diploma in Applied Geology of the Indian School of Mine, Dhanbad, or any qualifications recognised by Government to be equivalent thereto, and
(iii) have practical experience in the field of (a) carrying out systematic hydro geological surveys in ingeneous sedimentary and metamorphic terrains (b) ground-water exploration and assessment by drilling and testing and (c) processing, interpretation of field date and in preparing and editing technical reports for a total period of ten years out of which three years. experience shall be in organising. supervising and guiding field units."

We are now concerned with the case of promotion from amongst the Senior Geologists under Sub-Clause (a) of Rule 3(1) of the Rules.

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The appellant herein joined in the Agricultural Department of the State some time in the year 1963 and at that time he possessed the qualification of B.Sc. with Geology as a principal subject. He was promoted as Senior Geologist on 25.6. 1979. He passed his M.Sc. (Geology) in 1982 with first class and he was also first in the Nagpur University in the subject of pure Geology. He is also the senior most in the seniority list of senior Geologists. He was also holding the additional charge as Deputy Director from 16.6. 1982 for quite some time. The Maharashtra Public Service Commission by the notification dated 21st May. 1983 called applications for direct recruitment to the post of Deputy Director in the Ground Water Survey and Development Agency. which is governed by Rule 3(1)(c) of the Rules. In regard to the qualification for appointment the advertisement stated:

Qualifications: Candidates must possess:

(i) A post-graduate degree in Geology or Applied Geology of a recognised University or Diploma in Applied Geology of the Indian School of Mines, Dhanbad or any qualification recognised by Govt., to be equivalent thereto;
(ii) 10 years practical experience in the field of
(a) Carrying out systematic hydrological surveys in ingeneous sedimentary and metamorphic terrains.
(b) Ground water exploration and assessment by drilling and testing and--
(c) Processing, interpretation of field data and in preparing and editing technical reports, of which three years' experience shall be in organising supervising and guiding field units.

N.B. (1) The academic qualifications and experience acquired upto the last date prescribed for receipt of applications alone will be taken into account in determining the eligibility of candidates for the posts and for selecting them for the interview.

(2) Academic qualification shall be deemed to have been acquired on the date on which the result of the relevant examination is declared by the competent authority.

(3) Experience acquired after obtaining the prescribed

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academic qualifications only will be taken into account."

The appellant applied to the Service Commission but he was not called for an interview on the ground that he acquired the post-graduate degree in Geology only in the year 1982

and he does not possess the necessary qualification of 10 years practical experience after obtaining the post-graduate degree. The appellant filed Writ Petition No. 500 of 1983 before the High Court of Judicature of Bombay at Aurangabad contending that rule 3(1)(c) of the Maharashtra rules does require the practical experience after obtaining the qualification of a post-graduate degree in Geology and the insistence on such experience after obtaining the prescribed academic qualification was illegal. In this connection he contended that sub-clauses (ii) and (iii) of clause (c) of Rule 3(1) of the rules are two independent requirements, that they have to be read disjunctively and the experience required under subclause (iii) need not be after possessing the basic educational qualification of a post-graduate degree in Geology. This contention was not accepted by a Division Bench of that Court and by order dated 16. 11. 1983 Writ Petition No. 500 of 1983 was dismissed. Against that judgment the appellant has preferred Civil Appeal No. 2146 of 1984. While granting special leave this Court in its order dated 16.4. 1984 observed "The Government will decide itself as to whether the petitioner should or should not be reverted". However it appears the petitioner was reverted on 4.7. 1985 to the position of Senior Geologist. Subsequently the Government created a new post of Deputy Director Ground Water Survey at Aurangabad. This post was sought to be filled by promotion under Rule 3(1)(a) of the rules by the Selection Committee. The appellant was selected and appointed as Deputy Director on 14.12. 1986. This appointment was challenged under Writ Petition No. 2161 of 1986 on the file of Nagpur Bench of the Bombay High Court by one Bhaiyya s/o Govindrao Karale on the ground that even for promotion from amongst the Senior Geologists the candidate should possess not only a post-graduate degree in Geology but also 10 years experience posterior to such acquisition of post-graduate degree and that since the appellant does not have the necessary experience he is not qualified to be promoted under clause (a) of Rule 3(1) of the rules. This Division Bench also took similar view as in the earlier case and by an order dated 26th June, 1987 the writ petition was allowed and the selection and promotion of the appellant as Deputy Director under Rule 3(1)(a) of the rules was also quashed. Against this judgment Civil Appeal 2 166 of 1987 has been filed. When this appeal was pending the Government of Maharashtra amended Rule 3(1)(a) by

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substituting for the words "sub-clauses (ii) and (iii) of clause (c)", the words "sub-clause (ii) of clause (c)". Thus the requirement of 10 years experience mentioned in sub-clause (iii) of clause (c) was deleted in respect of appointment by promotion. In the counter affidavit filed by the State Government it is stated that this was done because in the case of a promotion the requirement of 10 years experience subsequent to the acquisition of post-graduate degree in Geology was redundant and, therefore, should not be insisted upon and it is in that view the rule was amended. However, in direct recruitment the 10 years experience after acquiring the post-graduate qualification was retained. On the interpretation of the rule prior to its amendment which was relevant for considering Civil Appeal No. 2 146 of 1984 we are of the view that the view taken by the Aurangabad bench does not call for any interference. Normally when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisi-

tion of the qualification. However, in the case of a promotion the same interpretation may not be just or warranted. It would depend on the relevant provisions as also the particular type of experience which is required. However, this need not detain us because as we have already stated the Government have now omitted the requirement of experience by the said Amendment. The Amendment was made on 16th February, 1988 and published in the Gazette on 24.3. 1988. Though the Rule does not say anything about its retrospective operation there could be no doubt that it is retroactive. This amendment shall be deemed to apply to the present case as well especially when the matter is pending in this Court and this appointment is with reference to a case of promotion and appointment, It is true that at the time when the appellant was promoted the Rule had not been amended. However it may also be mentioned that the appellant is the senior most among the Senior Geologists and even if he is to be considered again under the amended rules he shall have to be appointed and nothing is stated in these proceedings which would disqualify him even now. In the circumstances we are of the view that the appeal against the decision in Writ Petition No. 2161 of 1986 will have to be allowed though Civil Appeal No. 2146 of 1984 will have to be dismissed.

Accordingly we allow Civil Appeal No. 2166 of 1987 set aside the judgment of the Division Bench in Writ Petition No. 2161 of 1986. Civil Appeal No. 2146 of 1984 is however dismissed. There will be no order as to costs.

G.N.

CA No. 2166/87 allowed.
and CA No. 2146/85 dismissed.