

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3683 OF 2001

- 1) Dr. Shirish Narharrao Chitte,
Age-41 years, Occu:Service,
R/o-Vet. Polyclinic Campus,
Opp. Panchayat Samiti Office,
Jalna,
- 2) Dr. Sunil s/o Gangaram Khodwe,
Age-42 years, Occu:Service,
R/o-ZP Quarters,
Opp. Ghati Hospital, Aurangabad,
- 3) Dr. Tippa s/o Vishwanath Anantwal,
Age-41 years, Occu:Service,
R/o-Government Quarters, Harsool,
Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
(Through its Secretary,
Department of Animal Husbandry,
Mantralaya, Mumbai-32),
- 2) The Commissioner of Animal
Husbandry, Central Building,
Pune,
- 3) The Chairman,
Maharashtra Public Service Commission,
Bank of India Building,
Fort, Mumbai,

- 4) Dr. D.P. Nandedkar,
Age-63 years, Occu:Pensioner,
R/o-Kapila Housing Society,
Gokhale Nagar, Pune,
- 5) Dr. R.T. Wazarkar,
Age-60 years, Pensioner,
R/o-Aundh, Pune,
- 6) Dr. L.R. Sagdeo,
Age-60 years, Occu:Pensioner,
R/o-C/o-S.P. Saxena, Advocate,
Pune,
- 7) Dr. Mallikarjun S. Hulsure,
Age-46 years, Occu:Service,
Joint Director of Animal Husbandry,
Latur Region, Latur,
- 8) Dr. C.M. Deshpande,
Age-61 years,
Retired Joint Director of Animal
Husbandry, Waman Nagar, Nanded,
- 9) Dr. D.R. Parandekar,
Age-61 years,
Retired Joint Director,
Gokhale Nagar, Pune,
- 10) Dr. S.A. Khabade,
Age-60 years,
Retired Joint Director of Animal
Husbandry, Pune,
- 11) Dr. P.D. Dixit,
Age-60 years,
Retired Joint Director of
Animal Husbandry, Pune,

- 12) Dr. Dinesh s/o Binaykrishna Muzumdar,
Age-49 years, Occu:Service,
R/o-Building No.1/3, Vishal Heights,
Subhash Nagar, Vishrantwadi,
Pune-15.

...RESPONDENTS

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Mr.S.B. Talekar Advocate for Petitioners.
Mr.G.K. Thigale, A.G.P. for Respondent
Nos.1 and 2.
Mr. M.B. Bharaswadkar Advocate for Respondent
Nos. 4 to 6.

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**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 6TH MAY, 2015

ORAL ORDER :

1. Mr. Talekar, the learned counsel for the Petitioners submits that the Petitioners are governed by the rules applicable to the Animal Husbandry Department. Vide Government Resolution dated 14th October 1969 the rules have been promulgated. As per Rule 6 of the said Rules, in case of Class-III employees, no person is entitled to be promoted to higher post unless he has passed the departmental examination. In exceptional cases

only a person can be promoted to the higher post though he has not passed the examination. But the same is by way of exception. The Tribunal while passing the impugned Judgment, has applied the said exception as a rule, which is absolutely erroneous. The same affects the promotional chances of the present Petitioners. The provisional seniority list published on 21st May 2001 was likely to be finalized. The same is outcome of the Judgment passed in Original Application Nos.189 of 1998 and 627 of 1998. As such though the Petitioners are not party to the said Original Applications, as Petitioners would be affected by the said Judgment, it is necessary for the Petitioners to assail the said Judgment.

2. The learned counsel for the Petitioners submits that the Maharashtra Civil Services (Regulation of Seniority) Rules 1982 are applicable only if there are no specific service

conditions or rules made applicable to a particular department. As special rules are already made and applicable to the employees of Animal Husbandry Department, said Rules of 1982 are inapplicable.

3. The learned Additional Government Pleader submits that no person who was senior to the Petitioners and who had not passed the departmental examination, has been promoted ahead of the Petitioners. Learned Additional Government Pleader submits that said statement is made as per the instructions received from the Deputy Commissioner, Animal Husbandry. The said communication is marked "X" for identification.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. On 15th April, 2015, we had recorded the

averments made in the affidavit in reply made by the Respondents. The said averments read as under:

"14. I say and submit that the contentions of the petitioner in para no.19 is true and correct. However, it is submitted that the seniority list was published on 21.5.2001, which was prepared on the basis of the judgment and order dated 4.8.2000 in OA 189/98. However, seniority is given to the petitioner as per the principles of seniority laid down in para 4 of Government Notification dated 21.6.82, which is correct.

15. I say and submit that the department examination in Accounts is require to be passed in the official cadre i.e. Live Stock Development Officer and as per the seniority and passing of the departmental examination and merit, the officers are promoted as Assistant Director of Animal Husbandry. Further, promotions i.e. Deputy Director, Joint Director and Additional Director are given as per the seniority and merit in Assistant Director, Deputy Director and Joint Director's cadre."

6. We had specifically asked the learned Additional Government Pleader as to whether any person who has not passed the departmental examination is promoted ahead of the Petitioners.

On instructions, it has been stated that no person who was senior to the Petitioners and who has not passed the departmental examination was promoted ahead of the Petitioners.

7. In light of above, the Petitioners cannot be said to be aggrieved or affected by the order of the Tribunal.

8. In light of the above, Writ Petition stands disposed of. Rule disposed of. No costs.

[A.I.S.CHEEMA, J.]

asb/MAY15

[S.V. GANGAPURWALA, J.]