

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7847 OF 2011

1. Dr. Ramdas Laxmanrao Khesar,
Age : 63 Yrs., Occu. Retired,
R/o. Panvadod, Tq. Sillod,
Dist. Aurangabad.
2. Dr. Dattatraya Govindrao Sawai,
Age : 68 Yrs., Ocu. Nil-Pensioner,
R/o Kamdhenu Griha Nirman Sanstha,
Pisadevi Road, New Mondha,
Jadhavwadi, Aurangabad.
3. Dr. Kashinath Laxman Salgar,
Age : 72 Yrs., Occu. Nil-Retired,
R/o Near Mitra Nagar,
Post Office, Latur.
4. Dr. Syed Abdul Kayyum Mohd. Hancel,
Age : 67 Yrs. Occu. Nil-Retired,
R/o Khorl Galli, Near Shri Pradeep
Patil Khandapurkar, Latur.
5. Dr. Digambar Vasudeorao Saljoshi,
Age : 73 Yrs., Occu. Nil-Retired,
R/o N-9/M-2-131/2 Dnyaneshwar
Nagar, HUDCO, Aurangabad.
(Deleted as per leave granted by the
Hon'ble Court)
6. Dr. Laxman Nagorao Dixit,
Age : 64 Yrs., Occu. Nil-Retired,
R/o Samrath Nagar,
New Chinchgavhan Majalgaon,
Dist. Beed.
7. Dr. Prabhakar Rangachayra Warkhedkar,
Age : 73 Yrs., Occu. Nil-Retired,
R/o N-9/H-95, Shrikrishna Nagar,
Hudco, Aurangabad.
8. Dr. Murlidhar Vishwanath Suvarnakar,
Age : 69 Yrs., Occu. Nil-Retired,
R/o 1, Kamdhenu Society,
Pisadevi Road, Jadhavawadi, Aurangabad.

9. Dr. Sharad Gangadharrao Thorat,
Age : 69 Yrs., Occu. Nil-Retired,
R/o N-7/A-19 G-1/31/12,
Triveni Nagar, Cidco,
Aurangabad. ... Petitioners

Versus

1. The State of Maharashtra,
Through the Secretary,
Agriculture, Animal Husbandry,
Dairy Development & Fisheries
Department, Mantralaya,
Mumbai – 32.
2. The Commissioner of Animal
Husbandry, M.S. Pune.
3. The Secretary,
Finance Department,
Mantralaya, Mumbai – 32. ... Respondents

.....
Mr. Ajay S. Deshpande, Advocate for petitioners
Mr. D. R. Korde, A.G.P. for respondent Nos. 1 to 3
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 11.08.2015**

**Date of pronouncing
the Judgment : 29.10.2015**

JUDGMENT (PER V. K. JADHAV, J.) :-

1. The petitioners are retired Livestock Development Officers, (hereinafter, for the sake of brevity, referred to as the “LDO”) holding in service diploma and all of them have registered themselves in Part I Register maintained by Veterinary Council of Maharashtra. All the

petitioners stood retired from the post of LDO during the period from 1997 to 2006. They were appointed as Assistant LDO. They were promoted subsequently to the post of LDO. Since the formation of the cadre of LDO in the year 1991, both the graduates and diploma holder LDOs were being treated alike and were given same pay scale. In the year 1986, and also in the year 1996, the diploma holders were given same treatment in 4th and 5th pay Commissions, respectively. However, the Government of Maharashtra, by promulgating a notification issued in its Finance department, dated 20.3.1999, granted higher pay scale to the graduate counter parts in the cadre of LDO. Although the cadre of LDO was given pay scale of Rs.6500-10500 without making any distinction amongst the members of the cadre under the aforesaid notification dated 20.3.1999, the graduate members were given higher pay scale of Rs.8000-13500 and their counter parts in the cadre, who were holding diploma, were continued on the pay scale of Rs.6500-10500. Though the petitioners represented their cause with pay anomaly and pay disparity committees, their grievance was not redressed by the Government while issuing the Government Resolution on the recommendation of two committees.

2. Being aggrieved by the same, the petitioners approached the Maharashtra Administrative Tribunal by filing Original Application No.

132 of 2008, *interalia*, claiming parity in the pay scale with their graduate counter parts. The Tribunal, by judgment and order dated 17.8.2011, dismissed original application No. 132 of 2008.

3. There was yet another litigation at the instance of the association, by way of writ petition No. 4619 of 1997, seeking protection to those Veterinary practitioners in the Government employment who have registered themselves with the Maharashtra Veterinary Council, as was provided then and by virtue of implementation of the Central Veterinary Council Act, 1984 in the State of Maharashtra w.e.f. 1.8.1997. The said writ petition bearing No. 4619 of 1997 came to be partly allowed by this Court by judgment and order dated 26.4.2006. This Court afforded protection for those Veterinary practitioners in the State who were in the Government employment and who had registered themselves in Part I of the Register maintained by the State Veterinary Council, in view of the provisions of Section 23(1) of the Central Veterinary Council Act, 1984. However, the decision rendered by this Court did not afford protection to those who had not registered themselves in Part-I Register of the State Veterinary Council and thus, the non-registered and certificate holders/Dairy Diploma holders continued to have an apprehension in respect of their service conditions. Consequently, some of Veterinary practitioners in the Government service

approached the Apex Court, challenging the dismissal of writ petition to their extent. The Apex Court dismissed the said challenge, being reported judgment viz. ***Udai Singh Dagar and others vs. Union of India and others, 2007 AIR SCW 4638***. Previously, the Veterinary Practitioners' Association had filed original application No. 418 of 1999 at the principal Bench of Maharashtra Administrative Tribunal at Mumbai for the same relief, which was dismissed by the Tribunal on 6.10.2000.

4. The learned Tribunal dismissed Original Application No. 132 of 2008 mainly on two grounds. It is observed by the learned Tribunal that Original Application No. 418 of 1999 was filed by the Veterinary practitioners' Association, Maharashtra. Although the judgment in writ petition No. 4619 of 1997 decided on 26.4.2006 was not in the field on 6.10.2000 when the Original Application No. 418 of 1999 was decided by the Tribunal, by virtue of notification dated 1.8.1997, the Central Act was made applicable to the State of Maharashtra w.e.f. 1.8.1997. Thus, Section 23(1) of the Central Act was available to the applicant Association to rely upon. However, such an argument does not seem to have been pressed into service. The learned Tribunal further observed that consequently, the original application No. 132 of 2008 would be hit by the principle of constructive *res-judicata*, as the ground then available was not raised and thus, the decision in

Original Application No. 418 of 1999 obstructs the applicants in Original Application No. 132 of 2008 from pursuing the application. Secondly, the learned Tribunal has observed that the Apex Court in the case of ***Udai Singh Dagar and others vs. Union of India and others, (Supra)***, which was preferred against the decision of this Court in writ petition No. 4619 of 1997, dismissed the writ petition and the Civil Appeal subject to observations and directions contained in the said judgment of the Apex Court. The learned Tribunal has further observed that on going through the contents of judgment of the Apex Court, it appears that the protection granted to the diploma/certificate holders by the judgment of this Court in writ petition No. 4619 of 1997, stood diluted by virtue of observations and directions in the judgment of the Apex Court.

5. Learned counsel for the petitioners submits that the Recruitment Rules framed on 22.12.1988 for the post of LDO in Animal Husbandry Service, Class-II, provides two fold criteria for being considered to the appointment as LDO. Thus, the holder of degree in Veterinary Science and Animal Husbandry is eligible to be appointed by nomination whereas, in service Assistant LDO who has put in minimum service of ten years and has successfully completed in service diploma course in Veterinary Science and Animal Husbandry, are held eligible to be appointed as LDO Class-II, by

promotion. The said Recruitment Rules were given retrospective effect from 1st April, 1981. Learned counsel further submits that both the degree holders and diploma holders were treated on par for all legal and practical purposes once they entered into cadre of LDO Class-II in Animal Husbandry service, Class-II. All in service diploma holders in Veterinary Science were required to register themselves in Part I Register maintained by the Maharashtra Veterinary Council, like their graduate counter parts, then and then only they were considered to be eligible to discharge all duties attached to the post of LDO Class-II. Learned counsel submits that irrespective of the educational qualification, degree and diploma holders are brought on par and the incumbent who enters in the cadre, the birthmarks no longer continue to exist. The member of a particular cadre continued to be a member of the cadre, irrespective of educational qualification. Learned counsel submits that deficiencies in educational qualification has been cope up by requiring the diploma holders to put in particular number of years of service and registration of their names with Maharashtra Veterinary Council in Part I of the Register.

6. Learned counsel for the petitioners submits that under the decision of this court in writ petition No. 4619 of 1997 dated 26.4.2006, those, who have registered themselves in Part I Register

maintained by the Maharashtra Veterinary Council, have been absolutely protected. Even they do not come under the limitation imposed under Section 30 of the Indian Veterinary Council Act 1984, which has been brought into force in the State of Maharashtra w.e.f. 1.8.1997.

7. The learned counsel further submits that the Government did not challenge the said decision of this Court in writ petition No. 4619 of 1997 before the Apex Court. Therefore, the rights accrued under the said decision of this Court in favour of those who are covered by the provisions of Section 23(1) of the Central Veterinary Council Act, 1984, which become applicable in the State of Maharashtra from 1.8.1997, and who have registered themselves with the Maharashtra Veterinary Council in Part I Register, stands protected. Learned counsel further submits that the Association had challenged the decision of this Court for the benefit of those certificate and diploma holders who have not registered themselves with the Maharashtra Veterinary Council. Therefore, effect of decision in writ petition No. 4619 of 1997 has not been diluted at all. Learned counsel thus submits that an additional protection has been granted by the Apex Court. Learned counsel further submits that in the light of decision as aforesaid, up-gradation of pay scale of the graduate LDOs vide notification dated 20.3.1999 at Exhibit "C" and failure to redress the

grievance of diploma holder LDOs while removing the anomalies of various cadres by promulgating Government Resolution dated 27.2.2006, is absolutely unjust and unsustainable in the eyes of law. Learned counsel thus submits that injustice meted out to the petitioners deserves to be suitably and appropriately redressed by directing the respondents to bring the pay scale of all LDOs, whether degree holder or diploma holder, on par in the pay scale of Rs.8000-13500 w.e.f. 1.1.1996.

8. Learned counsel for the petitioners, in support of his contentions, also placed reliance on the following judgments:-

- I) *V. Markendeya and others vs. State of Andhra Pradesh and others, (1989) 3 SCC 191,***
- II) *Union of India and antoher vs. TVLN Malikarjuna Rao, (2015) 3 SCC 653,***
- III) *Kamlakar and others vs. Union of India and others, AIR 1999 SC 2300,***
- IV) *State of Kerala vs. B. Renjith Kumar and others, 2008 AIR SCW 4279,***
- V) *Union of India and others vs. Atul Shukla and others, (2014) 10 SCC 432.***

9. The learned A.G.P. for the respondents submits that

subsequent to the adoption of Indian Veterinary Council Act, 1984, in the State of Maharashtra w.e.f. 1.8.1997, 5th Pay Commission recommended distinction in the pay scale to graduates and non graduates. Learned A.G.P. further submits that only veterinary graduate LDOs, whose names have been duly entered in the Register of veterinary practitioners maintained by the State Veterinary Council and Central Register maintained by the Indian Veterinary Council, can practice private veterinary medicines in the State and render veterinary services i.e. surgery etc. to the livestock and all the diploma holders, whose names are not entered in the aforesaid registers have to render minor veterinary services under the supervision and directions of registered veterinary practitioners. The learned A.G.P. thus further submits that this is explicitly clarified by the Apex Court in Civil Appeal No. 2537 of 2007 arising out of the petition for Special leave to appeal (Civil) No. 11880 of 2006. The learned A.G.P. further submits that the Maharashtra Veterinary Practitioners Act, 1971 has been repealed with adoption of Indian Veterinary Council Act, 1984 in the State of Maharashtra w.e.f. 1.8.1997 and therefore, the nature of work and duties to be performed by the graduate LDOs and non graduates LDOs obviously needs to be looked upon as per the relevant provisions of Indian Veterinary Council Act, 1984. The learned A.G.P. further submits that the decision rendered by the Apex Court in the aforesaid Special

leave to Appeal has direct connection with the order dated 26.4.2006 passed by this Court in writ petition No. 4619 of 1997. The learned A.G.P. has brought our attention to the paragraph Nos. 69, 70 and 71 of the judgment of the Apex Court in the aforesaid Special Leave to Appeal and submits that the State of Maharashtra has issued notification in terms of clause (b) of Section 30 of the Central Act which has laid down what would be the minor veterinary services. Therefore, having been specified in terms of the said notification, certificate holders, who are in service of the State or other semi Government organizations, are entitled to continue in service subject to carrying out their duties strictly in terms of the said notification issued by the State of Maharashtra. In view of this, learned AGP further submits that, distinction made by the State Government in allotting different pay scale to the graduate LDOs and non graduate LDOs stand justified on account of specific and higher duties and responsibilities to be performed by the graduate LDOs and minor veterinary services required to be rendered by the non graduate/diploma holders under the supervision and directions of registered Veterinary practitioners working in Animal Husbandry department of the State. The learned A.G.P. thus submits that the learned Tribunal has rightly dismissed the original application No. 132 of 2008. The writ petition is devoid of any merits and the same is liable to be dismissed.

10. The learned A.G.P., in support of his contentions, places reliance on the following judgments:-

- I. V. MarKendeya and others vs. State of Andhra Pradesh and others, reported in (1989) 3 SCC 191,
- II. Udai Singh Dagar and others vs. Union of India and others, 2007 AIR (SCW) 4638
- III. The Maharashtra State Veterinary Council vs. State of Maharashtra and others, 2011 (2) Mh.L.J. 196

11. The judgment in writ petition No. 4619 of 1997 decided on 26.4.2006 was not in the field on 6.10.2000 when Original application No. 418 of 1999 was decided. However, by virtue of notification dated 1.8.1997, Central Act was made applicable to the State of Maharashtra w.e.f. 1.8.1997. The learned Tribunal has observed that the provisions of Section 23(1) of the Central Act, though available to the Association to rely upon and to raise a plea that such employees are protected against the adverse effects of Section 30 of the Central Act, such ground was not raised and therefore, the applicants could not be allowed to raise the plea in the Original Application No. 132 of 2008, as it would be hit by the principles of *constructive res-judicata*. It is well settled that so far as the principle of *constructive res-judicata* is concerned, the same cannot be made applicable against

the legal proposition available to the parties. Furthermore, this court can examine the issue in view of subsequent pronouncements while exercising inherent jurisdiction under Article 226 of the Constitution of India.

12. We may refer some of the provisions of Indian Veterinary Council Act 1984. Sections 23 and 30 of the said Act read as under:-

“23. Indian veterinary practitioners register.-

(1) The Council shall, as soon as may be after the commencement of this Act, cause to be maintained in such form and in such manner as may be provided by regulations a register of veterinary practitioners to be known as the Indian veterinary practitioners register which shall contain the names of all persons who possess the recognised veterinary qualifications and who are for the time being enrolled on a State veterinary register of the State to which this Act extends.

(2) It shall be the duty of the Secretary of the Council to keep the Indian veterinary practitioners register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India or in such other manner as may be provided by regulations.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.

(4) Each State Veterinary Council shall furnish to the Council six printed copies of the State veterinary register as soon as may be after the 1st day of April of each year and each State Veterinary Council shall inform the Council without delay of all additions, and other amendments in the State veterinary register made from time to time."

"30. Right of persons who are enrolled on the Indian Veterinary practitioners register.- No person, other than a registered veterinary practitioner, shall

(a) *hold office as veterinary physician or surgeon or any other like office (by whatever name called) in Government or in any institution maintained by a local or other authority;*

(b) *practice veterinary medicine in any State:*

Provided that the State Government may, by order, permit a person holding a diploma or certificate of veterinary supervisor, stock-man or stock assistant (by whatever name called) issued by the Directorate of Animal Husbandry (by whatever name called) of any State or any veterinary institution in India, to render under the supervision and direction of a registered veterinary practitioner, minor veterinary services.

Explanation- "Minor veterinary services" means the rendering of preliminary veterinary aid, like, vaccination, castration, and dressing of wounds, and such other types of preliminary aid or the treatment of such ailments as the State Government may, by notification in the Official Gazette, specify in this behalf;

(c) be entitled to sign or authenticate a veterinary health certificate or any other certificate required by any law to be signed or authenticated by a duly qualified veterinary practitioner.

(d) be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872, on any matter relating to veterinary medicine.”

13. This Court, in the judgment delivered in writ petition No. 4619 of 1997 and more particularly in para 5 of the judgment, has made the following observations:-

“5. Section 23 of the Central Veterinary Act deals with the Indian Veterinary practitioners register and sub-section (1) reads as under:-

(1) The council shall, as soon as may be after the commencement of this Act, cause to be maintained in such form and in such manner as may be provided by regulations a register of veterinary practitioners to be known as the Indian veterinary practitioners register which shall contain the names of all persons who possess the recognized veterinary qualifications and who are for the time being enrolled on a State veterinary register of the State to which this Act extends.” (Emphasis supplied).

In our opinion, section 23(1) has protected the existing practitioners whose names appear on the enrollment of the State

Veterinary register as veterinary practitioners and this issue granting registration under the State Veterinary Act was covered under Section 18 therein. Section 18 of the State Veterinary Act, to the extent relevant, reads as under:

“18. Persons entitled to be registered:

(1) Subject to the provisions of this Act, every person shall, if he holds any of the qualification included in the Schedule, be entitled on application to be registered, on payment of such fee as may be provided by regulations and on giving evidence to the satisfaction of the Registration Officer or the Registrar, as the case may be, of his possession of a qualification entitling him for registration.

(2) The State Government may, after consulting the Registration Officer or the Council, as the case may be, permit the registration of any person who has been actually conducting veterinary practice in the State of Maharashtra on such conditions as may be provided for by regulations made for this purpose notwithstanding the fact that he may not be possessing qualifications entitling him to have his name entered in the register.

(3) Every person for the time being registered with the Veterinary Council of any other State in India under any law for the registration of veterinary practitioners in force in such State shall, if reciprocity of registration has been arranged with such Council, be entitled to be registered under this Act, on making an application in that behalf, on payment of such fee as may be provided by regulations and on his informing the Registration Officer or the Registrar, as the case may be, of the date of registration under the said law and on giving a

correct description of his qualifications with the dates on which they were granted."

14. In the light of above observations, this Court in writ petition No. 4619 of 1997, has opined that whether degree holders or diploma holders, who were enrolled in the State Veterinary Council register, Part I prior to March 1997, will stand protected under Section 23(1) of the Central Veterinary Act and thus the petitioners, whose names have been enrolled and listed in Part II register under section 18(2) of the State Veterinary Act and the Regulation framed by the State Government do not have benefit of such protection and their enrollments, even if granted, would be subject to the applicability of Section 30 of the Central Veterinary Act. This Court in the above writ petition No. 4619 of 1997 has made it clear that w.e.f. 1.8.1997 onwards, enrollments of veterinary practitioners shall be strictly governed under the provisions of Section 23 read with Section 30 of the Central Veterinary Act and the Rules and Regulations framed thereunder by the Government of India. This Court, in the aforesaid writ petition, has not entertained the second prayer made by the petitioners for declaration that the diploma holders or non-graduate holders should be allowed to be enrolled as veterinary practitioners and further held that the existing registered veterinary practitioners whose names appear in the register Part I maintained by the State

Veterinary Council are duly protected by the provisions of Section 23 of the Central Veterinary Act even on the enforcement of the Central Veterinary Act in the State of Maharashtra from 1.8.1997. This Court, thus, partly allowed the writ petition in terms of the above clarifications and dismissed the writ petition for the relief prayed in terms of clause (B) as stated above.

15. In the case of ***Udai Singh Dagar and others vs. Union of India and others (supra)***, the Apex Court, by referring the prayers made in writ petition No. 4619 of 1997 in para 69, 70 and 71 of the judgment, has made the following observations:-

“69. We are not beset with such a situation in the instant case. The right of the petitioners to practise in the field of veterinary practice has expressly been taken away. When such a right has been taken away upon laying down as essential qualification therefor which the petitioners admittedly do not possess, the right of the petitioners to continue to practice despite the fact that they do not fulfill the criteria laid down under the Parliamentary Act or the Central Act would not survive.

70. The expression “unless a different intention appears” contained in Section 6 of the General Clauses Act, thus, in this case, would be clearly attracted. A right whether inchoate or accrued or acquired right can be held to be protected provided the right survives. If the right itself does not survive and either expressly or by necessary implication

it stands abrogated, the question of applicability of Section 6 of the General Clauses Act would not arise at all. [See Bansidhar and Others v. State of Rajasthan, (1989) 2 SCC 557 and Thyssen Stahlunion GmbH v. Steel Authority of India Ltd., (1999) 9 SCC 334]

71. For the reasons aforementioned, we respectfully agree with the view taken by the High Court.”

16. The Apex Court, while appreciating the submissions of the counsel in terms of Section 6(1)(c), which not only protects the vested or accrued right but also inchoate rights, in para 67 of the judgment in the case of **Udai Singh Dagar & Ors (supra)**, has made following observations:-

“67. Whether such a right is protected or not must be considered having regard to the statute in question. If a right has crystallized before the repealing Act comes into force, by reason of repeal of the earlier statute indisputably the right crystallized cannot be taken away.”

17. The Apex Court has also referred to Section 17(1) of the Interpretation Act, 1978 which provides that where an Act repeals a previous enactment and substitutes new provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into force.

18. In the light of these observations and the reasons mentioned above, the Apex Court, in para 71 of the judgment, confirmed the view taken by this Court in writ petition No. 4619 of 1997.

19. We thus, do not agree with the conclusion drawn by the learned Tribunal that the protection granted to diploma/certificate holders by the judgment of this Court stood diluted by virtue of the directions in the judgment of the Apex Court in the case of ***Udai Singh Dagar (supra)***. The Association had challenged the decision rendered by this Court in writ petition No. 4619 of 1997 for the benefit of those certificate and diploma holders who had not registered themselves with the Maharashtra Veterinary Council and Government of Maharashtra did not challenge the decision of this Court before the Apex Court. The Apex Court, on the other hand, afforded protection to them who are in service of the State or Semi Government or local self Government Organizations and held that those certificate holders in the organizations are entitled to continue in service subject to, of course, carrying out their duties strictly in terms of notification issued by the State under clause (b) of Section 30 of the Central Act.

20. It appears that, prior to 1999, diploma holders and degree holders in Veterinary Science were treated on par and were being

given same pay scale. "The Live Stock Development Officers in the Maharashtra Animal Husbandry Service, Class-II, in the Animal Husbandry Department (Recruitment) Rules, 1998", which came into force w.e.f. 1.4.1981, did not make any distinction amongst the degree holders and diploma holders when they are brought in the cadre of LDO. It appears from the said Rules that the qualification has been brought at common level by requiring the diploma holders to have particular number of years of continuous service. This Court, in writ petition No. 4619 of 1997 has brought diploma holders on par with the degree holders who have registered themselves with part I register maintained by the Maharashtra Veterinary Council, especially keeping in view that Indian Veterinary Council Act, 1984 has been brought into force from 1.8.1997. The degree holders and diploma holders, whose names have been recorded in Part I register prior to 1.8.1997 were treated on par so far as profession in Veterinary practice is concerned.

21. The Registrar, Maharashtra State Veterinary Council, Nagpur by letter dated 4.2.2002 has given clarification regarding letter issued by the said office dated 4.1.2002 that the rights and privileges of the persons already enrolled under the council as per the Maharashtra Veterinary Practitioners Act 1971 prior to 1.8.1997 are not at all disturbed and are fully protected. Similarly, a communication

forwarded by the Secretary of Veterinary Council of India, New Delhi, dated 2.5.2000 (Exh. K, page 104) of the compilation of writ petition, clarified in the note given below the said communication that the right and privileges specifically provided through [Maharashtra Veterinary Practitioners Act 1971] to the persons registered under clause (b) & (c) of that Act before 1.8.1971 may not be disturbed while implementing Indian Veterinary Council Act 1984 in the State of Maharashtra. Needless to repeat here that all petitioners are amongst those, who have registered themselves in Part I Register maintained by the Maharashtra Veterinary Council under the provisions of Maharashtra Veterinary Practitioners Act 1971 and thus stood protected under the decision of this Court in writ petition No. 4619 of 1997, which is upheld by the Supreme Court in the case of ***Udai Singh Dagar and others vs. Union of India and others, (supra)*** by equating themselves with the Veterinary practitioners as contemplated under Section 23(1) of the Central Veterinary Council Act, 1984.

22. In the case of ***Maharashtra State Veterinary Council vs. The State of Maharashtra (supra)***, the petitioner- Maharashtra State Veterinary Council, Nagpur has challenged the appointment of Live Stock Supervisors made by the respondent Zilla Parishad in pursuance to the advertisement issued by the Zilla Parishad. In this

view of the matter, this Court (Nagpur Bench) has held that the respondents are entitled to recruit the non graduate practitioners at Veterinary Science for rendering minor veterinary services only as contemplated by Notification issued under Section 30(b) of the Act on the post such as Live Stock Supervisor and that non graduate practitioners of Veterinary Science will not be entitled to hold any post of Veterinary Physician or Surgeon in the Government or any institution maintained by local authority or practice veterinary medicine in the State of Maharashtra. It is further directed that the respondent State of Maharashtra and Chief Executive Officer, Zilla Parishad shall ensure that no non graduate veterinary practitioner employed by them shall be allowed to hold any post of Veterinary Physician or Surgeon or be allowed to function, except under the supervision and direction of a registered veterinary practitioner. In the light of notification issued under Section 30(B) of the Central Veterinary Act, the Division Bench of this Court (Nagpur Bench) held that non graduate practitioners at Veterinary Science will not be entitled to hold any post of Veterinary Physician or Surgeon in the Government department or any institution. It appears that the Division Bench of this Court was not required to deal with the question whether the diploma holders, who were enrolled/registered in the State Veterinary Council Register, Part I prior to March, 1997, stood protected under Section 23(1) of the Central Veterinary Act.

This Court in writ petition No. 4619 of 1997 has held that Section 23(1) has protected the existing practitioners whose names appear on the enrollment of State Veterinary Register as Veterinary Practitioners and the same is upheld by the Apex Court in the case of ***Udai Singh Dagar and others vs. Union of India and others, (supra)***. This Court has already held in writ petition No. 4619 of 1997 that the Veterinary practitioners, whose names have been enrolled/listed in Part II Register under Section 18(2) of the Veterinary Act and the regulations framed by the State Government do not have such benefit of protection and their enrollments, even if granted, shall be subject to applicability of Section 30 of the Central Veterinary Act. However, those diploma veterinary practitioners whose names have been enrolled/registered in Part I Register are entitled to practice on par with those possessing degree.

23. In view of aforesaid circumstances and discussion, we pass the following order:-

ORDER

- I. Writ petition is hereby allowed.
- II. The judgment and order dated 17.8.2011 passed by the learned Maharashtra Administrative Tribunal Bench at Aurangabad in Original Application No. 132 of 2008 is hereby quashed and set aside.

- III. The respondents are hereby directed to extend the benefit of pay scale of Rs.8000-13500, as applicable to the post of Livestock Development Officer as against the scale of Rs.6500-10500, to the petitioners/diploma holder Livestock Development Officers, who have been registered in Part I register maintained by the Maharashtra Veterinary Council,
- IV. Rule is made absolute in the above terms and writ petition is disposed of.
- V. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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