

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 564 OF 2015

Daga S/o Bhura Wagh
Age : 50 years, Occ : Service
As a Library Attendant,
R/o Wadi Bhokar, Tq. & Dist. Dhule.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education
Department, Govt. of Maharashtra
Mantralaya, Mumbai.
2. The Joint Director of Higher Education
Jalgaon Region, Jalgaon.
3. North Maharashtra University,
Jalgaon, Dist. Jalgaon
Through its Registrar
4. Vidyavardhini Sanstha,
Dhule, Dist. Dhule
Through its Secretary
5. Vidyavardhini Mahavidyalaya
Dhule, Dist. Dhule
Through its Principal
6. Rahul Wagh
Age : 25 years, Service as Jr. Clerk,
Vidyavardhini Mahavidyalaya,
Dhule, Dist. Dhule.

..RESPONDENTS

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Advocate for Petitioner : Mr. P.G. Rodge
AGP for Respondent/State : Mrs.M.A. Deshpande
Advocate for Respondent nos.4 to 6 : Mr.A.G. Talhar

**CORAM : S.S. SHINDE &
P.R. BORA, JJ.**

**RESERVED ON : July 28, 2016
PRONOUNCED ON : August 11, 2016**

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ORDER :-

This petition is filed with the following prayers :-

"C) By writ of certiorari or any other appropriate writ order or directions in the nature of writ of certiorari, quash and set aside the appointment order issued by Respondent Nos. 4 and 5 in favour of respondent no.6 as a Jr. Clerk by way of direct recruitment and for that purpose issue necessary orders;

D) By writ of mandamus or any other appropriate writ order or directions in the nature of writ of mandamus, the respondent Nos. 4 and 5 be directed to promote the petitioner on the post of Jr. Clerk in the respondent No.5 College and for that purpose necessary directions be issued."

2. The learned counsel appearing for the petitioner submits that the petitioner has passed his 12th standard examination in the year 1990 and has completed his B.Com. The petitioner belongs to the Scheduled Caste category. He is already serving in class-IV post and rendered more than 25 years of service. The petitioner is possessing the requisite qualification for appointment on the post of junior clerk, hence applied for the said post. However, the Respondent nos. 4 and 5, instead of appointing the petitioner, who is already serving in class-IV category in Respondent No.4 establishment, advertised the post of Junior Clerk for direct recruitment and appointed Respondent No.6.

3. It is submitted that as per the provisions of new sub-rule (2) of Rule 3 of the Maharashtra Non-Agricultural Universities

and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employee) Rules, 1984 (hereinafter referred to as "the Standard Code Rules, 1984"), which has been inserted by Notification No.USG.1185/6437-UNI-3 dated 30.12.1986 simultaneously in place of sub-clause (b)(1) of Clause (III) of earlier sub-rule (3) of Rule 3 of the Standard Code Rules, 1984, the petitioner is very much eligible and entitled for promotion to Class-III post i.e. Junior Clerk. It is submitted that as per this new sub-Rule (2) of Rule 3 of the Standard Code Rules, 1984, Respondent Nos. 4 and 5 shall have first to adopt the recourse to consider the class-IV employees for promotion to the post of Junior clerk and if Class-IV employees would not available for promotion, then and then only, Respondent Nos. 4 and 5 are entitled to fill in the post of Junior clerk by issuing advertisement and by way of

direct recruitment, as provided under sub-clause (b)(1) of Clause III of Sub-rule (3) of Rule 3 of the Standard Code Rules, 1984. However, in the present case, Respondent Nos.4 and 5 by deliberately suppressing the real facts before Respondent No.2 – Joint Director of Higher Education that there are other employees from Class-IV category including the petitioner eligible for promotion to the post of Junior clerk before Respondent No.2 – Joint Director of Higher Education, have collusively obtained permission of Respondent No.2 for filling in the said vacant post of junior clerk reserved for Scheduled Caste. Thus such permission has been obtained by Respondent Nos. 4 and 5, but that does not mean that they proceed to fill in the said post of Junior clerk by issuing advertisement or by appointing outsider candidate when there are Class-IV employees, and more particularly, the petitioner is

eligible for promotion to the said post reserved for scheduled caste.

4. It is submitted that as per the contention of Respondent Nos. 4 and 5 that there are two senior employees of Class-IV cadre than the petitioner, presuming without admitting that there is nobody in class-IV cadre from S.C. category senior to the petitioner, then question is that why Respondent Nos. 4 and 5 did not consider the claim of so called senior Class-IV employees for promotion to the post of junior clerk, as per new Sub-rule (2) under Rule 3 inserted by Notification No. USG.1185/6437-UNI-3 dated 30.12.1986 in the Standard Code Rules, 1984. Thus, by giving go-bye to the said new Sub-rule (2) of Rule 3, the recourse undertaken by respondent nos. 4 and 5 for filling in the said vacant post of junior clerk reserved for S.C. category by way of direct recruitment

under sub-clause (b)(1) of clause (iii) of Sub-rule 93) of Rule 3 is not legal and proper. It is further submitted that the respondent nos. 4 and 5 by quoting provisions of sub-clause (b)(1) of clause (III) of Sub-rule (3) of Rule 3 are falsely contending that the subject matter of the post of Junior Clerk is governed by the said provisions of sub-clause (b)(iii) and by making such wrong submissions are opposing genuine claim of the petitioner for promotion to the said vacant post of Junior Clerk reserved for S.C. Category.

5. The learned counsel also invites our attention to the grounds taken in the Petition, annexures thereto, also averments in the rejoinder affidavit, and submits that the Standard Code Rules, 1984 specifically mandates that if any of the lower grade staff improves his qualification as prescribed for

the post of Clerk, such employee should be given preference while filling in the said post considering his placement in seniority. In support of the aforesaid contention, he placed reliance on the unreported judgment of the Bombay High Court bench at Aurangabad in the case of **Virbhadra S/o Mallikarjun Hudge V/s The State of Maharashtra and others in Writ Petition No. 2369 of 2007** decided on 13th August, 2009 and the reported judgment of the Hon'ble Supreme Court in the case of **Ramesh Shivram Khairnar V/s State of Maharashtra and others.**¹

6. The learned counsel appearing for Respondent Nos. 4 to 6, relying upon the averments in the affidavit in reply, submits that the specific provision is laid down under the Standard Code Rules. Rule 2 lays down the procedure how the appointments are

1 2003(4)Mh.L.J. 470

to be made. In Rule 3, the recruitment procedure is also given in respect of class Class I, Class II and Class III employees. He invited our attention to the said procedure and submits that for the appointment of junior clerk, the appointment is to be made on the basis of seniority-cum-merit from amongst the persons, who are working in the Universities or affiliated colleges and who possess the minimum qualifications prescribed for the lower posts and the minimum experience of 3 years in the lower posts. He submits that Respondent No.6 is appointed after seeking permission of Respondent No.2. It is submitted that the petitioner is not qualified for the said post since he lacks inherent qualification i.e. English and Marathi Typing and M.S.C.I.T. i.e. Computer Course, and thus the petitioner is not having the essential qualification for the post of junior clerk. The learned counsel also

submits that there were complaints against the petitioner and also till date he has not submitted the validity certificate, so as to substantiate his claim that the petitioner is belonging to S.C. category. Therefore, relying upon the averments in the affidavit-in-reply, he submits that the Petition deserves to be rejected.

7. The learned A.G.P. appearing for the Respondent/State, relying upon the averments in the affidavit-in-reply, submits that Respondent Nos. 4 and 5 after seeking permission from Respondent No.2 have filled in the post of clerk and appointed Respondent No.6. It is submitted that the appointing authority for affiliated colleges is the management of the college or the authorities specified by the management as per constitution of the society. The B.C. Cell of the concerned university also verified and

approved the Roster of the said college and accordingly, two posts of junior clerks were approved i.e. one for Open and another for Reserved Category by way of direct selection. He submits that the petitioner lacks the necessary qualification, therefore, he has no right of appointment on the post of junior clerk.

8. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, the learned A.G.P. for respondent Nos. 1 and 2 and the learned counsel appearing for Respondent Nos.4 to 6. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, the replies filed by the respondents and also rejoinder affidavit filed by the petitioner. There is no dispute about the fact that if any of the lower grade staff improves his qualification as

prescribed for the post of Clerk, such employee should be given preference while filling in the said post considering his placement in seniority. However in the present case, the petitioner lacks basic qualification i.e. English and Marathi Typing and M.S.C.I.T. i.e. Computer Course. Though the learned counsel appearing for the petitioner submits that in view of the provisions in the Government Resolution dated 20th July, 2001 issued by the General Administration Department, after the appointment on the post of junior clerk, such qualification can be acquired, nevertheless, he has not brought to the notice of this Court that the petitioner possesses the certificate of English and Marathi Typing. There is no denial to the averments in the reply by Respondent Nos. 4 and 5 that the petitioner till date has not submitted the validity certificate so as to substantiate

his claim that he belongs to the S.C. category. It is not necessary for this Court to elaborate the reasons. Suffice it to say that the petitioner has not demonstrated that he possesses the requisite qualification for the said post. The Respondents have also stated in their reply that there are two employees, who are senior to the petitioner in class-IV category. The petitioner has not made out the case, so as to issue mandatory directions to the Respondents and to quash the appointment of Respondent No.6 and appoint the petitioner on the post of junior clerk.

9. It further appears that Respondent No.6 is appointed after following prescribed procedure and seeking prior permission/approval of Respondent No.2. Therefore, we are unable to persuade ourself to grant any relief in favour of the petitioner. Hence the

Petition stands rejected.

However, we make it clear that in case in future the petitioner acquires the necessary qualification for the said post, as held by the Hon'ble Supreme Court in the case of **Ramesh Shivram Khairnar (supra)**, if any of the lower grade staff improves his qualification as prescribed for the post of Clerk, such employee should be given preference while filling in the said post considering his placement in seniority, dismissal of this Petition shall not be construed as an impediment to consider his claim in future, in case of availability of clear, sanctioned and vacant post of junior clerk.

Sd/-

(P.R. BORA, J.)

Sd/-

(S.S. SHINDE, J.)