

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5352/2003

Subhash S/o Keshav Chaudhari,
Age-40 years, Occu.Service,
R/o Ram Mandir Ward,
Near Swami Narayan Temple,
Bhusawal, Dist. Jalgaon.

...Petitioner...

Versus

1] The State of Maharashtra ,
Through Secretary,
Education Department,
Mantralaya, Mumbai-32.

2] North Maharashtra University,
Through its Registrar.

3] The Grievance Committee,
North Maharashtra University,
Jalgaon.

4] Sudhir Baburao Patil,
Age 35 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

5] Purushottam S/o Devidas Kadam,
Age 34 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

6] Prakash S/o Madhukar Zope,
Age 38 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

7] Duryodhan S/o Baburao Solunke,
Age.35 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

...Respondents...

WRIT PETITION NO.5354/2003

Anil S/o Tukaram Chaudhari,
Age-41 years, Occu.Service,
R/o "Nil-Jit", 63-A,
Professor Colony, Jamner Road,
Bhusawal, Dist.Jalgaon.

...Petitioner..

Versus

1] The State of Maharashtra ,
Through Secretary,
Education Department,
Mantralaya, Mumbai-32.

2] North Maharashtra University,
Through its Registrar.

3] The Grievance Committee,
North Maharashtra University,
Jalgaon.

4] Sudhir Baburao Patil,
Age-35 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

5] Purushottam S/o Devidas Kadam,
Age-34 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

6] Prakash S/o Madhukar Zope,
Age 38 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

7] Duryodhan S/o Baburao Solunke,
Age.35 years, Occu.Service,
R/o North Maharashtra University,
Jalgaon.

...Respondents...

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Shri A.G.Talhar, Advocate for Petitioners.

Ms.S.S.Raut, AGP for the State.

Shri A.B.Girase, Advocate h/f Shri R.B.Raghuwanshi,
Advocate for Respondent No.2 in both petitions.

Respondent No.3 served.

Shri M.S.Deshmukh, Advocate for Respondent Nos.4 to 7 in
both petitions.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 20.12.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1] The petitioners herein pursuant to the selection process of the year 1991 were appointed as Assistants. The respondents herein had applied for the post of Peon and were appointed as Peon. Mr.Talhar, learned counsel for the petitioners submits that though these respondents were appointed as Peons, they were granted promotion as Assistants against the Rules and in the seniority list of Assistant, are placed above the petitioners, who were originally selected as Assistants. The same is impermissible. Even Rule 3(2) relied upon by the respondents would not be of any aid to them. Their services were confirmed as Peon in the year 1994/1995. Whereas, the petitioners were appointed on probation as Assistant in January, 1995, whereas were given

appointments on contract basis since the year 1993. By no stretch, the respondents could have been shown as senior to the petitioners in the cadre of Assistant.

2] Mr.Girase, learned counsel for the respondent no.2 - University submits that the respondents were appointed initially as Peon, however, subsequently were promoted as Assistants. The learned counsel submits that the University has given the details of each and every respondent and the petitioner about the appointments, date of joining, date of confirmation and no illegality has been committed by the University.

3] Mr.Deshmukh, learned counsel for the contesting respondent nos.4 to 7, submits that Sub-rule (2) of Rule 3 would be relevant and from Class IV to Class III, a person can be promoted after completion of three years of service in Class IV, the same has been rightly considered and four respondents i.e. Sudhir, Purushottam, Duryodhan and Prakash have been confirmed as Assistants on completion of probation period in January, 1997.

4] We have considered the contentions of the learned counsel for the parties.

5] At the outset, we express our displeasure towards the manner in which the record is maintained by the

University. The charts filed on record by the University in the affidavit in reply are certainly not in keeping with the rules, more particularly the Standard Code Rules, 1984. In Writ Petition No.5351/2003, the respondent no.4 is shown to have been selected under the selection process of 1991 as a Laboratory Attendant. He is appointed as a Peon on probation with effect from 3.10.1992 and is confirmed as a Peon on probation on 3.10.1994. Thereafter, he is appointed as an Assistant for a temporary period of six months on 21/22-11-1994 i.e. within one month and thereafter on 3.1.1995, he is appointed as an Assistant on probation with effect from 2.1.1995. During the period, the respondent is shown to be on probation as Peon, he is also shown to be working as Assistant. The similar state of affairs can be observed in respect of respondent nos.5, 6 and 7 in Writ Petition No.5354/2003. We fail to understand the manner in which the recruitment rules are followed. In fact, it appears that they have followed the said rules more in breach. The candidate is appointed in Class IV category. He is also appointed on probation in Class IV category and during the period of his probation on Class IV category, he is also working as an Assistant in Class III

category. The affidavit further states that initial record is also not available. But the fact remains that these respondents are shown to have been selected as Peon in the selection process conducted pursuant to the advertisement of the year 1991. Certainly, these persons cannot be shown to be senior to the petitioners who are admittedly selected as Assistants in the same selection process.

6] Considering the above, we quash the impugned order. Both the petitioners are to be considered as Assistants senior to the respondents herein as they have been appointed as Assistants. In the present writ petition, we are not disturbing the position as existing today. As far as promotion to the post of Senior Assistant is concerned, the criteria is seniority-cum-merit, which the departmental promotion committee or such other authority under the statute is required to consider. The petitioners may apply to the authorities for such further benefits as may be permissible in law. Rule is accordingly disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)