

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

WRIT PETITION NO. 3254 OF 2011

Dayanand Gyanoba Waghmare .. Petitioner

Versus

Vahabuddin Naimuddin Kazi and others .. Respondents

Shri Vijay G. Sakolkar, Advocate for the Petitioner.

Mrs. M. N. Deshpande, Advocate for the Respondent No. 1 -
absent.

Shri B. V. Virdhe, A.G.P. for Respondent Nos. 2 and 3.

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

DATE : 03RD OCTOBER, 2016.

PER COURT :

. Mr. Sakolkar, the learned counsel for the petitioner submits that, the Tribunal while passing the impugned order has failed to consider that, the Government Resolution dated 20th August, 2009 is subsequent to the promotion of the petitioner as a X-ray Technician. According to the learned counsel the petitioner was working as a dark room assistant since 01.08.2001. Considering the seniority of the petitioner in the cadre of dark room assistant, the petitioner was validly promoted as X-ray technician on 08.05.2009. According to the learned counsel, the post of dark room assistant is a feeder cadre for promotion to X-

ray technician. Considering the said aspect, the respondents could not have questioned the promotion of the present petitioner. Mr. Quazi was already holding the post of dark room assistant. The said circular relied upon by the Tribunal was not applicable in the instant case.

2. The learned Assistant Government Pleader submits that, the circular relied by the Tribunal dated 19.01.2006 is not applicable. In the said circular D.M.E.R. has given direction to prepare seniority list of S.S.C. passed Class IV employees of the pay scale (Pre revised - 2550-3200 and Revised 4440-7440 Grade Pay 1300) and the said circular specifically deals with the promotion of Class IV employees to the post of Laboratory Assistant of Pre revised pay scale of Rs. 3200-4900/- The aspect of pay scale has not been considered by the Tribunal.

3. We have considered the submissions made by learned counsel for respective parties. So also have gone through the judgment delivered by the Tribunal.

4. The Rules i. e. the X-ray Technician, X-ray Assistant and Dark Room Assistants in the Directorate of Medical Education and Research (Recruitment) Rules, 1999 (for the sake of 'Rules of 1999') specifically lay down the manner of appointment to the post of X-ray technician in the directorate. The same reads as

under :

"3. Appointment to the post of X-Ray Technician in the Directorate shall be made either.

(a) by promotion of a suitable person on the basis of seniority, subject to fitness from amongst persons holding the post of X-Ray Assistant or Dark room Assistant in the Directorate having not less than five years regular service in that post.

(b) by nomination from amongst the persons who;

(i) are not more than thirty years of age,

Provided that a person who is already in the Government service, upper age limit shall be relaxed by ten years and

(ii) Posses a degree ins cience with physics, chemistry or Biology

of

have passed the Higher Secondary School Certificate Examination in vocational education in vocation of X-Ray Technician and

(iii) Possess five years experience as X-Ray Assistant or Dark-room Assistant, in government or Semi-Government hospital.

Provided that, the reference may be given is a person who possess a

degree in physics."

5. Reading the said rules, it is manifest that, for promotion to the post of X-ray technician, the cadre of X-ray assistant and/or dark room assistant is a feeder cadre. The Tribunal has directed to maintain the common seniority of the dark room assistant and X-ray assistant for promotion to the post of X-ray technician. The same appears to be in consonance with the Rules of 1999. Moreover, the Tribunal has also relied on the instructions dated 19.01.2006 issued in this regard for maintenance of the common seniority list. The pay scale which persons would be getting, would not be of much relevance. The post on which they are working would be relevant.

6. Considering aforesaid aspect of the matter and the rules existing, we do not feel that any error has been committed by the Tribunal. The Tribunal has directed to maintain the common seniority and thereafter consider the aspect of promotion and till that time promotion of the petitioner has been maintained as adhoc promotion. In the light of the above, writ petition stands disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]