

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5674/2015

1] Nasir Husen Abdul Kayyum Deshmukh
Age 45 years occ: Service,
As Pharmacist in Jalgaon Municipal
Corporations Hospital, resident of
Nasheman Colony, Plot No.1, Mehrum
Jalgaon.

2] Sou.Ushal Trimbakrao Bavaskar
Age 45 years, Occ: Service
As pharmacist in Jalgaon Municipal
Corporations Hospital, R/o gut No.35
Plot no.35, Muktainagar, Jalgaon.

3] Chandrakant S/o Gulabrao Salunke
Age 48 years Occ : Service
As pharmacist in Jalgaon Municipal
Corporations Hospital, resident of
Plot No.6, Shradha Colony
Jalgaon.

4] Dinesh S/o Sitaram Tiwari
Age 48 years Occ: Service
As pharmacist in Jalgaon Municipal
Corporations Hospital, resident of
Shradha Colony, Near Data Mandir,
Jalgaon.

5] Attarhur Raheman Khan,
Age 48 years, Occ: Service
As Lab Technician , in Jalgaon
Municipal Corporation, Hospital,
R/o Plot No.306, Sharin Apartment,
Shivaji Nagar, Jalgaon.

6] Kiram S/o Onkar Wani
Age 55 years,Occ: Service

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As Lab Technician , in Jalgaon
Municipal Corporation, Hospital,
R/o Plot No.7 Gut No.63,
Vidhut Colony, Jalgaon.

..Petitioners..

Versus

1] The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2] The Commissioner,
Jalgaon Municipal Corporation,
Jalgaon.

3] The Deputy Commissioner,
Jalgaon Municipal Corporation
Jalgaon.

4] Establishment Office Superintendent
Jalgaon Municipal Corporation,
Jalgaon.

...Respondents..

WRIT PETITION NO.5675/2015

1] Sanjay S/o Murlidhar Patil,
Age 47 years occ: Service,
As Pharmacist in Jalgaon Municipal
Corporations Hospital, resident of
Sharda Colony, Soham Apartment,
Jalgaon.

2] Anil S/o Ramdas Bhole,
Age 50 years, Occ: Service
As pharmacist in Jalgaon Municipal
Corporations Hospital, R/o Plot No.4
Kishor Colony, Jalgaon.

3] Nasrullah Abdullah Shah,
Age 48 years Occ : Service
As pharmacist in Jalgaon Municipal

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Corporations Hospital, resident of
Mannat Nagar, Meharum,
Jalgaon.

4] Vishal S/o Jagannath Patil,
Age 58 years Occ: Service
As pharmacist in Jalgaon Municipal
Corporations Hospital, resident of
02, Shikshak Wadi, Ring Road,
Jalgaon.

..Petitioners..

Versus

1] The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2] The Commissioner,
Jalgaon Municipal Corporation,
Jalgaon.

3] The Deputy Commissioner,
Jalgaon Municipal Corporation
Jalgaon.

4] Establishment Office Superintendent
Jalgaon Municipal Corporation,
Jalgaon.

...Respondents..

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Shri Amol Kakade, Advocate for petitioners.
Shri V.S. Badak, AGP for respondent nos.1 & 2.
SHri V.D. Gunale, Advocate for respondent no.3.

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

DATE: 19.10.2016

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

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1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petitions are taken up for final disposal at this stage.

2] Learned counsel for the petitioners states that the petitioners were appointed as Pharmacist in the year 1991/1992 pursuant to various appointment orders. In fact, since 1987/1988, these petitioners were working as Pharmacist / Laboratory Technician with the respondent no.3 - Corporation. Only for one day, an appointment order was shown to have been given as that of Peon / Coolie. However, again by passing a resolution, these petitioners were appointed as Pharmacist within a short span of 2/3 days. According to the learned counsel, since 1992, the petitioners are discharging their duties as regular Pharmacist. The petitioners were given the benefit of the Fourth, Fifth and Sixth Pay Commissions. The learned counsel submits that even juniors to the petitioners, who were working as Pharmacist and Laboratory Technician, are being given the pay-scale as was revised. However, show cause notice came to be issued to the petitioners on the ground that by

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misleading the office of the respondent - Corporation, the petitioners have got higher pay-scale and grade pay fixed. The learned counsel submits that the petitioners are qualified to work as Pharmacist. The petitioners are discharging their duties as Pharmacist continuously since the year 1991/1992. The juniors to the petitioners are being paid more pay-scale than what is being sought to be paid to the petitioners pursuant to the impugned orders. The petitioners are entitled for all the said benefits. They are regularly appointed. They have also undergone selection process. Even the resolution is passed by the erstwhile Municipal Council. The petitioners cannot be paid pay less than what is being paid to their juniors. The institutions from which the petitioners have obtained the qualification are duly recognized institutions.

3] Learned counsel for the respondent no.3 - Corporation submits that the petitioners are not appointed by following due selection process. In fact, they were appointed as Peon and within three days were given promotion as Pharmacist / Laboratory Technician. The same is against the rules. The juniors to the petitioners are appointed by following due selection

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process and as such are entitled for the pay-scale as per the Sixth Pay Commission and grade-pay of Rs.4200/-. As the petitioners are not appointed by following due procedure of law, they are entitled to grade pay of Rs.3200/- only. According to the learned counsel, though the petitioners possess the necessary qualification to be appointed as Pharmacist / Laboratory Technician, they have not passed the said course from duly recognized institutions. The Auditor has raised an objection and pursuant to the same, the show cause notice is issued and the impugned orders have been passed. No error has been committed.

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

5] There is no dispute that the present petitioners atleast since 1991/1992 are discharging their duties as Pharmacist continuously. They were granted the benefits of Fourth and Fifth Pay Commissions. The petitioners possess the necessary qualification for the post of Pharmacist. The same is not disputed. The juniors to the petitioners are being paid the same pay-scale and grade pay as is paid to the petitioners prior to the

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impugned orders. It would be too late in the day for the respondent - Corporation after long slumber of 25 years to contend that the petitioners were not appointed by following due procedure of law. It is the Corporation who had appointed the petitioners on the vacant posts. It is not disputed that when the petitioners were appointed as Pharmacist in the year 1991/1992, they were appointed on sanctioned vacant posts and they were possessing the necessary qualification. The resolution is also passed by the erstwhile Municipal Council.

6] As such, it would not be open for the respondent - Corporation now after lapse of 25 years to contend that the petitioners were not appointed after following proper procedure of law and juniors to the petitioners are also paid proper pay-scale as per the Sixth Pay Commission.

7] The next contention raised by the respondent - Corporation is that the institutions from where the petitioners have acquired the qualification are not recognized. According to the petitioners, some institutions are Government institutions and some are Government recognized institutions. The said aspect can be considered by the respondent - Corporation.

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8] Considering the above, the impugned orders are quashed and set aside. The respondent no.3 - Corporation shall consider the petitioners to be properly appointed and pass orders afresh pursuant to the show cause notice issued to the petitioners after hearing the petitioners and shall not refuse the pay-scale and grade pay as applicable to Pharmacist only on the ground that the petitioners were not properly appointed. The said decision shall be taken expeditiously. Rule is accordingly made absolute in above terms. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)