

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

960 WRIT PETITION NO. 7649 OF 2015

LOMESH KESHAV CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO. 7673 OF 2015

SANJAY JEEVAN INGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Talhar Ajay G.
AGP for Respondents State: Mr. V. H. Dighe

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

DATE : 23rd September, 2016

ORDER:

1. Mr. Talhar, the learned counsel for the petitioners states that the proposal was submitted by the respondent Institution seeking approval to promotion of the petitioners as Laboratory Attendant. The said proposal is allowed, however, with condition that the salary payable to the petitioners would be as that of the peon. The learned counsel submits that such condition would not have been issued. After the petitioners' services are approved as Laboratory Attendant, they are entitled to receive salary of Laboratory attendants.

2. Learned counsel for respondent Nos. 3 and 4 supports the case of the petitioners. Learned AGP states that post of Laboratory Attendant is not available, but to protect the services of the petitioners, approval is granted as Laboratory attendant on the condition that salary of peon would be paid, because the petitioners would be required to render the services as peon.

3. We have considered the submissions.

4. If the Education Officer was of the opinion that the post of Laboratory Attendant is not admissible, then, in that case, he could not have approved the promotion of the petitioners as Laboratory Attendant. The order as passed certainly cannot be sustained. The respondents cannot be directed to pay the petitioners, the salary of Laboratory Attendant unless the petitioners assail the order itself. However, as per contention of the petitioners, at the relevant time, post of Laboratory Attendant was admissible and if subsequently the post is not admissible, the petitioners can be declared surplus.

5. Considering the above, we pass following order:

O R D E R

(1) The impugned order granting approval to the promotion of the petitioners as Laboratory attendant and also condition that they will be paid salary of peon is quashed and set aside.

(2) The respondent Management shall submit a fresh proposal seeking approval to the promotion of the petitioners as Laboratory Attendant.

(3) The Education officer shall scrutinize the said proposal and if it is found that at the time when order was passed promoting the petitioners as Laboratory Attendant, the post was admissible, shall consider the said fact while considering the proposal for approval and shall grant approval as Laboratory Attendant. Subsequently, if the posts are reduced or have become inadmissible, due to any reason, shall declare the petitioners, surplus.

(4) Writ petitions are accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC