

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

23 WRIT PETITION NO. 8846 OF 2015

RAHUL RANGARAO PATIL
VERSUS
THE STATE OF MAHARASTHRA AND OTHERS
WITH
WRIT PETITION NO. 5829 OF 2016

BAHUUDESHIYA SHIKSHAN PRASARAK MANDAL, GADKHAMB AND ANOTHER

VERSUS
THE STATE OF MAHARASTHRA AND OTHERS

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Advocate for Petitioner in WP/8846/2015 : Ms. Surekha P.
Mahajan Advocate for Petitioner in WP/5829/2016 : Mr. N. P.
Patil Jamalpurkar

AGP for Respondents 1 to 3: Mrs. R.P. Gour
Advocate for Respondent No.5 in WP/8846/2015 : Mr. Sachin S.
Deshmukh

Advocate for Respondent No.4 in WP/5829/2016 : Ms. Surekha
P. Mahajan

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

DATE : 22nd November, 2016

ORDER:

1. Writ Petition No.8846/2015 is filed by the employee with a prayer to appoint him as Lab Assistant with effect from 2008 with further prayer to grant him pay scale and grade pay as claimed in the petition. Whereas, Writ petition No. 5829/2016 is filed by the employer, challenging the order passed by the Assistant Commissioner (Social Welfare), Jalgaon, dated 17.11.2015, directing pay scale of Lab Attendant to be paid to the employee.

2. Ms. Mahajan, the learned counsel for the employee submits that the petitioner employee was appointed as Lab Attendant on 03.07.2004 but is paid salary of peon. The petitioner is entitled for the salary as applicable to the Lab Attendant.

3. In the impugned order, the petitioner employee is granted pay scale as applicable to the Lab Attendant from 28.02.2006. According to the learned counsel for the petitioner employee, no error has been committed. The learned counsel submits that the post of Lab Assistant became vacant in the year 2008. The claim of the petitioner ought to have been considered on the said post, however, the same is not considered. The learned counsel relies on the judgment of the Division Bench of this Court in case of **Ashok Shankarrao Shinde Vs. Prabodhan Shikshan Sanstha, Nagpur**, reported in **1999 (1) MH.LJ 348** and another judgment of the Division Bench of this Court in case of **Ramesh Shivram Khairnar Vs. the State of Maharashtra and others** reported in **2003 (4) Mh. L.J. 470**. The learned counsel submits that the said post of Lab Assistant ought to have been filled by promotion and the same would be in consonance with Schedule F of the M.E.P.S. Rules.

4. Mr. Patil, the learned counsel for the employer submits that the order impugned in Writ petition No. 5829/2016 has been passed without even notice to the Management nor the Management and the Headmaster were heard. True and correct facts could have been brought to the notice of the authority if the hearing would have been given. Appointment order itself lays down the pay scale to which the employee would be entitled to. Now, after a long period of 6/7 years, the employee cannot contend otherwise. The learned counsel further submits that a person was appointed as Lab Assistant in the year 2008. The said appointment was never assailed up to the year 2015. Approval is also granted to the appointment of the said person as Lab Assistant i.e. Respondent No.6 in the petition filed by the employee. The approval was also never challenged.

5. We have considered the submissions canvassed by the learned counsel for the respective parties. The judgments relied by Ms. Mahajan, the learned counsel for the petitioner employee are perused.

6. No doubt, for the post of Lab Assistant, the Management is required to consider a person to appointed on the said post by promotion and that is the mandate in Schedule F of the M.E.P.S. Rules. It would

appears that respondent No.6 in the petition filed by the employee has been appointed as Lab Assistant in the year 2008. In case the employee was aggrieved by such appointment, the petitioner ought to have assailed the said appointment immediately. Subsequently, even appointment of said respondent No.6 is approved by the authority. Objections for the first time seems to have been raised after seven years. It would be inappropriate and inequitable at this stage to unsettle the said position.

7. As far as pay scale is concerned, it appears that the Management was not heard while granting pay scale. The impugned order placed on record shows that the petitioner was appointed as Lab Attendant. Pay scale is required to be paid to an employee of a post of which the employee discharges functions and duties. According to the Management, there were some complaints against the petitioner employee and some punishment was imposed such as stoppage of increment and that has been argued by the learned counsel for the employer. Be that as it may, the said aspect would be considered by the authorities.

8. Considering the fact that the order impugned by

the employer is passed without hearing the employer, we set aside the said order with the observation that the Assistant Commissioner, Social Welfare, Jalgaon shall decide the issue of pay scale payable to the employee afresh.

9. All parties shall appear before the Assistant Commissioner, Social Welfare, Jalgaon on 05.12.2016. As the date of appearance is given by this Court, no separate notice is required to be issued by the authority. The authority shall pass orders afresh with regard to the pay scale, payable and applicable to the petitioner as Lab Attendant, expeditiously, preferably within six weeks from the date of appearance.

10. The parties are at liberty to put forth their stands before the Assistant Commissioner (Social welfare). All contentions in that regard are kept open.

11. Writ petitions are accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC