

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

BENCH AT AURANGABAD.

WRIT PETITION NO.853 OF 2006

Ramesh Gopalrao Dhutade
and others. ... Petitioners.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.U.R.Awate, advocate holding for
Mr.S.B.Talekar, advocate for the petitioners.
Mr.D.R.Kale, A.G.P. for the State.

...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 22.08.2017.

PER COURT :

1. The petitioner assails the order passed by the Tribunal, directing to consider the original applicants from the quota of 60% meant for graduate.

2. Mr.Awate, learned counsel submits that

the petitioner was not made party before the Tribunal. The order of the Tribunal affects the rights of the petitioner. The petitioner was possessing graduate qualification prior to his appointment. Because of the order of the Tribunal even those candidate who were not possessing graduate qualification at the time of their appointment and possessed graduate qualification at the time of promotion would be considered along with the petitioner. The same is illegal and is not countenance by law. The date of acquiring qualification ought to be considered as the date for the purpose of determining the seniority.

3. The learned A.G.P. supports the order.

4. There is no rule suggesting computation of seniority from the date of acquiring qualification. In absence of any rule, the length of service coupled with fitness will have to be considered.

5. The notification dated 19.8.2004, more

particularly, Rule 3(a) thereto reads as under :

" Appointment to the
posts of Agriculture
Supervisor/Laboratory
Inspector/Computer (Statistical Branch)
in Group 'C' in the Commissionerate,
shall be made either

(a) by promotion of a
suitable person, on the basis of
seniority subject to fitness from
amongst the persons holding the posts
of Agriculture Assistant/Laboratory
Assistant, Group 'C' having not less
than three years regular service in
that post;

Provided that, the ratio for
promotion amongst the persons who
possess a degree and who do not possess
a degree diploma shall be 60 : 40 of
the vacancies available for promotion
or

(b)

(c)"

6. The criteria is subject to fitness. As the subject is not covered by rule, the seniority amongst the persons holding the similar post in the same cadre has to be determined on the basis of length of service, of-course, subject to fitness. Reference can be had to the judgment of the Apex Court in the case of **"M.B.Joshi and others Vs.Satish Kumar Pandey and others"** reported in **AIR 1993 Supreme Court 267** and in the case of **"Pramod K.Pankaj Vs. State of Bihar and others"** reported in **AIR 2004 Supreme Court 746**.

7. In light of the above, no error has been committed by the Tribunal. The Writ Petition is dismissed. Rule discharged. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

