

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

WRIT PETITION NO. 10293 OF 2015

Bhaskar Raosaheb Wagh .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri. S.R. Barlinge, Advocate for Petitioner.

Shri. V.S. Badakh, A.G.P. for Respondents No. 1 to 3.

Shri. Shaikh Mazar A Jahagirdar, Advocate for Respondent No. 4.

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

DATED : 25th April, 2017

PER COURT:

. The petitioner claims to have been appointed as an Assistant Librarian in the year 1993. Thereafter it appears that the petitioner had approached the Collage Tribunal. The College Tribunal passed an order in the year 1998, thereby not entertaining the appeal, however, observed that the Joint Director shall determine the post admissible to the College. The Joint Director in the impugned order has rejected the proposal

seeking approval to the appointment of the petitioner under the impugned order on the ground that the post of Assistant Librarian was not admissible earlier, the same was admissible in the year 2001-02 and thereafter, from the year 2007-08. According to the impugned order as the petitioner was over age in the year 2007-08 and in the said year advertisement was not issued for filling in the post, as such the post of Assistant Librarian cannot be approved.

2. Mr. Barlinge, the learned counsel for the petitioner submits that even the respondent State does not dispute that the petitioner was appointed after following due process of law. The petitioner was continuously working since the year 1993. As such the relevant age of the petitioner would be the age when the petitioner was appointed and continued. Even in 2001-02 the post was admissible and when the petitioner was appointed in the year 1993 by following due procedure of law and continued then from the year 2001-02, the case of the petitioner could have been considered.

3. Mr. Jahagirdar, the learned counsel for Respondent No. 4 on instructions states that the petitioner was appointed in the year 1993 and has continuously worked as an Assistant Librarian with Respondent No.

4.

4. The learned A.G.P. submits that the appointment of the petitioner in the year 1993 cannot be considered as on the said date the post of Assistant Librarian was not admissible and in 2007-08 no advertisement was issued. So also the petitioner had crossed the maximum age limit. The Joint Director of Higher Education has rightly considered the said aspect.

5. We have considered the submissions. The Joint Director Higher Education, Aurangabad region in his affidavit accepts that the petitioner is appointed under order dated 01/02/1993 and that the petitioner joined the services from 17/12/1992. It is also not disputed by the respondent authorities that the appointment of petitioner was after following due procedure of law i.e. advertisement was issued and after adherence to the selection procedure, appointment order was issued. The question would be about the admissibility of the post. The petitioner was continued in service is accepted by the respondent no. 4. From the impugned order it transpires that earlier to 2001-02 the post of Assistant Librarian was not admissible. As such even if the petitioner was appointed by following due process of law, the same would not enure to the benefit of the petitioner

for considering the case of the petitioner from the year 1993. For the first time it appears that the post of Assistant Librarian was admissible in the year 2001-02 and again from the year 2007-08. In the year 2007-08 the petitioner had become over age. It is stated that in the year 2001-02 when the post become admissible for the first time the petitioner was within the prescribed age limit.

6. When it is not disputed by the institution so also by the authorities, on the contrary, upon enquiry it is accepted by the respondent authorities that the petitioner was appointed by following due procedure of law in the year 1993 and was continuously working then the case of the petitioner for approval to the appointment could be considered from the year 2001-02. However, the post was not admissible thereafter for a period of about 5 years, certainly the state cannot be taxed for payment to the petitioner.

7. It would be legal and equitable to pass the following order.

8. The respondent authority shall give approval to the appointment of the petitioner from the year 2001-02. The period from 2001-02 would be considered for the purpose of continuity in service and the petitioner would be entitled for salary and pay scale from the year 2007-08. The

Joint Director of Higher Education shall pass consequential order pursuant to the present order.

9. Writ petition is accordingly disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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