

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

WRIT PETITION NO.4809 OF 2000

Ajay s/o. Sarjerao Deshmukh,
Age: 29 years, Occ: Librarian,
R/o. C/o. S.V.Deshmukh,
'Pasayadan' Navjeevan Shikshak
Colony, Beed, Dist. Beed.

PETITIONER

VERSUS

1. Navgan Shikshan Sanstha
Rajuri, Tq. & Dist. Beed
Through its Secretary
2. The Principal,
Navgan Shikshan Sanstha,
Rajuri's Arts and Commerce
College, Parli-Vaijnath,
Dist. Beed 431 515
3. Director of Board of
College and University
Development Dr.Babasaheb
Ambedkar Marathwada University
Aurangabad.
4. The Registrar,
Dr.B.A.M.University
Aurangabad
5. Joint Director [Grants]
Higher Education,
Aurangabad.
6. State of Maharashtra

RESPONDENTS

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Mr.R.J.Godbole, Advocate for the petitioner
Mr.S.J.Salgare, AGP for respondent nos.5 and 6 /
State
Respondent nos. 1 to 3 served.
Respondent no.4 served as per Court's order dtd.
29.01.2018.

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**CORAM: S.S. SHINDE AND
S.M.GAVHANE, JJ.**

**RESERVED ON : 20.02.2018
PRONOUNCED ON: 09.03.2018**

JUDGMENT: [PER S.S.SHINDE, J.]

1] Heard.

2] This Petition is filed with the following
prayers:

*B] By writ of certiorari or other
appropriate writ or order or direction
the impugned order dated 15/16.9.2000
passed by respondent no.3 [Exh.H], may
kindly be quashed and set-aside.*

*C] It be held and declared that on the date
of interview i.e. on 10.1.2000,
petitioner was qualified to be appointed*

as Librarian in view of Govt. Resolution dated 25.3.1994 and as per advertisement issued by respondent management dated 14.6.1999 on the ground that process of selection had already commenced.

D] By writ of mandamus or any other appropriate writ order or direction respondents no. 1 to 5 be directed to select petitioner as Librarian in Navgan Shikshan Sanstha Rajuri's Arts and Commerce College, Parli Vaijnath, Dist. Beed, by giving necessary directions to selection Committee.

E] By writ of mandamus or any other appropriate writ order or direction respondents no.1 to 5 be directed to continue the petitioner on post Librarian in Navgan Shikshan Sanstha Rajuri's Arts and Commerce College, Parli Vaijnath, Dist. Beed, run by respondent nos. 1 and 2 and not to advertise the post of 'Librarian'.

3] It is the case of the petitioner that the petitioner was qualified to be appointed as 'Librarian' in view of the Government Resolution

dated 25.03.1994 issued by the Higher & Technical Education Department, Government of Maharashtra. The respondent – management advertised the post of 'Librarian' on 14.06.1999. Fifteen days time was given by the management for submitting application form, from the date of advertisement dated 14.06.1999. The last date for inviting application form was over. The call-letters were issued to the respective candidates along with the petitioner as per advertisement dated 14.06.1999. Thereafter, change was made in the requirement regarding qualification vide Government Resolution dated 11.12.1999 issued by the Higher & Technical Education Department, Government of Maharashtra [for the sake of brevity herein after will be referred as Government Resolution dated 11.12.1999]. The respondent University accepted the Resolution on 24.12.1999. The petitioner appeared before the Selection Committee, duly constituted by the University, on 10.01.2000. The petitioner has been selected as 'Librarian', but

subsequently on 15.09.2000 respondent no.3 informed the petitioner that in view of Government Resolution dated 11.12.1999, the petitioner is not qualified to be appointed as 'Librarian'. The order dated 15/16.09.2000 passed by respondent no.3 has been challenged by the petitioner by way of filing the present Writ Petition under Article 226 of the Constitution of India, on various grounds.

4] It is the case of the petitioner that the petitioner is M.Sc. [B+] and B.Lib. as such in view of the Government Resolution dated 25th March, 1994, he is qualified to be appointed as 'Librarian' in senior college. The petitioner was initially appointed by respondent no.1 as 'Librarian' on 07.07.1998, and as on today he is working as Librarian in the College of respondent no.1. Respondent no.1 advertised the post of Librarian in '*Dainik Lokmat*' dated 14.06.1999, inviting applications from the qualified

candidates, to submit their applications within 15 days from the date of advertisement. In response to the said advertisement, the petitioner applied to the said post on 18.06.1999. Thereafter on 23.12.1999, the call-letter was issued to him asking him to attend interview on 10.01.2000. On 10.01.2000, the interviews were held. The performance of the petitioner at the time of interview was very good. The petitioner was confident that he will be selected as 'Librarian'. The Selection Committee has selected the petitioner, but the Committee has not submitted report of selection on the ground that in view of Government Resolution dated 11.12.1999, the petitioner is not qualified to the post in question.

5] It is further the case of the petitioner that, thereafter on 03.03.2000 the petitioner made a representation to the Vice-Chancellor of Dr.Babasaheb Ambedkar Marathwada University,

Aurangabad, and requested to select the petitioner as Librarian, on the basis of his performance in the interview, which was held on 10.01.2000. In response to the said representation, respondent no.3, on 31.03.2000, called explanation from respondent no.2 as to why, the petitioner has not been selected as 'Librarian' by the Selection Committee on 10.01.2000. Respondent no.2 filed his reply and clarified that the Selection Committee wants to select the petitioner as Librarian but Smt.Vaishnav had raised an objection that the petitioner is not qualified to be appointed as Librarian, relying upon the recommendation of 5th pay commission in respect of requisite qualification and pay scale. Respondent no.2 further requested respondent no.3 to select the petitioner as Librarian. On 02.05.2000, again the petitioner has written a letter to respondent no.3 and requested to correct the mistake of the Selection Committee in non-selecting the petitioner on the ground of qualification.

6] On 15.09.2000, respondent no.3 replied to the representation and conveyed its decision that the petitioner has not completed M.Lib. with 55% as such is not entitled to be selected as 'Librarian' in Senior College. The Vice-Chancellor, vide his letter / Circular dated 24.12.1999, issued an order whereby the Government Resolution dated 11.12.1999 was made applicable to the University and College employees. The petitioner addressed various letters, but finally by giving reference of the decision of the Apex Court that criteria / qualification laid down in the advertisement cannot be changed subsequently in the selection process initiated pursuant to such advertisement, petitioner again addressed a representation / objection petition to the Vice-Chancellor and conveyed his grievance before him. But no heed was paid to his representation.

It is the case of the petitioner that the

process of selection was already commenced, and therefore, right was created in favour of the candidates to have their selection as per advertisement dated 14.06.1999. But in view of the letter of respondent no.3 dated 15.09.2000 right of the petitioner to be selected has been invaded.

7] Learned counsel appearing for the petitioner submits that the Hon'ble Supreme Court in the case of Gopal Krushna Rath Vs. M.A.A. Baig & others¹ has observed that when the selection process has actually commenced and the last date of inviting applications is over, any subsequent change in the requirement regarding qualification by the U.G.C. will not affect the process of selection which has already commenced. In the present case advertisement was issued on 14.06.1999. The applications were invited within 15 days from the date of advertisement. The said period was expired on 30.06.1999. The process of

¹ AIR 1999 SC 2093

selection started. On 10.01.2000 the date of interview was fixed. The resolution was passed by the Government of Maharashtra on 11.12.1999. On 24.12.1999 the contents of Government Resolution dated 11.12.1999 were accepted by the Vice Chancellor. As such in view of the ratio laid down in Rath's case, Selection Committee has to select candidate / candidates on the basis of criteria laid down in the Government Resolution dated 25.03.1994 issued by the Higher & Technical Education Department, Government of Maharashtra, and as per advertisement dated 14.06.1999. An essential qualification prescribed for the post of Librarian as per Government Resolution dated 25.03.1994 is as under:

“Master's degree in
Arts/Science/Commerce or equivalent
degree with at least fifty five
percent marks or its equivalent
grade with Bachelor's Degree in
Library Science / Information

Science / Documentation or an equivalent professional degree with at least 55% marks or equivalent grade plus consistently good academic record."

The petitioner is qualified as per the aforesaid qualification. The petitioner is M.Sc. with 55% marks and has passed the Bachelor's Degree in Library Science with more than 55% marks. Therefore, he applied to the post of Librarian advertised by the respondent - management on 14.06.1999. The petitioner submitted his application within 15 days as per the advertisement. The process of selection has actually commenced. The call-letters were issued on 23.12.1999. Therefore, on 24.12.1999, the Vice Chancellor issued Circular making change in the qualification. The required qualification as per the said Circular is M.Lib. with 55% marks. The petitioner was not possessing that qualification at the time of interview on 10.01.2000, and

therefore, his right to be selected as qualified candidate was affected. It is well settled judicial principle that the statutory rule or any subsequent change in the rule applies prospectively. The Supreme Court has held that, amending Rules could not affect the existing rights of those candidates who were being considered for selection, as they possessed the requisite qualifications prescribed by the Rules before its amendment. In the present case, the right of the petitioner for selection on the post of Librarian, as per his qualification on the date of issuance of advertisement is violated. The petitioner is possessing the necessary qualification as per the Government Resolution dated 25.03.1994. The qualifications were in accordance with Rules and Guidelines then in force. As such the petitioner is entitled to be selected by the Selection Committee as per his qualification, which were then in force. Therefore, the impugned letter dated 15.09.2000,

disqualifying the petitioner to be appointed for the post of Librarian is required to be quashed and set aside.

8] It is submitted that it is evident from the letter of Principal dated 26.04.2000 that the petitioner's performance before Selection Committee was good. It is also clear from the said letter that an objection has been raised by Smt. Vaishnav in respect of required qualification of the petitioner, otherwise the petitioner was actually selected by the Selection Committee. Due to lack of knowledge on the part of the Selection Committee in non-considering the petitioner as qualified candidate, the selection of the petitioner was not made. Therefore, it is required to be directed to respondent nos.1 to 4 to assess the performance of the petitioner as if the petitioner is qualified for the post of Lecturer and to select the petitioner for the post of Lecturer by observing that the petitioner is

entitled and qualified to be selected as Librarian in view of the Government Resolution dated 25.03.1994. The necessary orders be passed to select the petitioner as Librarian by giving directions to respondent nos. 1 to 5. The impugned letter dated 15.09.2000, declaring that the petitioner is not qualified to be appointed as Librarian, is required to be quashed and set aside in view of the ratio laid down in the *Gopal Krushna Rath [cited supra]*. Therefore, the impugned letter dated 15.09.2000 is illegal and improper and the same is required to be quashed and set aside.

9] On the other hand, learned AGP appearing for the respondent-State relying upon the affidavit in reply filed on behalf of respondent nos.5 and 6 submits that, as per the grant in aid formula, respondent no.5 is the authority to provide salary grants to the admissible and sanctioned posts subject to the annual utilization

of the grants. The management is the competent authority to fill up the posts of teaching and non-teaching staff as per the norms laid down. There is statutory Selection Committee, which is required to be constituted by the management / College for selection of Librarian. While interviewing and selecting the candidate, it is for the Selection Committee to verify and scrutinize the qualifications and other eligibility as per norms laid down by the UGC / Government and University. The petitioner was not qualified to be appointed as Librarian as per the 5th Pay Commission norms, as he has not secured requisite marks i.e. 55% marks in M.Lib. and therefore, respondent no.3 by his communication dated 15/16.09.2000 has refused to appoint the petitioner on the post of Librarian. The communication dated 15/16.09.2000 is already on record, which is at Exhibit-H Page-44 of the compilation of the Petition. Considering the facts and circumstances of the case, there is no

substance in the contentions raised by the petitioner in the present Petition, therefore, the Petition deserves to be dismissed.

10] We have considered the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, and the affidavit in reply filed on behalf of respondent nos.5 and 6. It is true that respondent no.2 published an advertisement on 14th June, 1999 in daily 'Lokmat', advertising the post of 'Librarian' from the open category, and at the relevant time the necessary qualification for the appointment on the said post was B.Lib. with 55% marks. However, it appears that the petitioner was called for interview by call-letter dated 23.12.1999. Meantime, the Government Resolution dated 11th December, 1999, issued by the Higher & Technical Education Department, Government of

Maharashtra, thereby laying down that the candidate interested for the appointment of the post of Librarian shall possess M.Lib. with 55% marks was brought into force. Therefore, the Committee, which interviewed the petitioner, did not recommend the name of the petitioner, keeping in view the aforesaid Government Resolution dated 11th December, 1999, which was issued prior to interviewing the petitioner. The qualification mentioned in the said Government Resolution has also relevance vis-a-vis 5th Pay Commission norms for the qualifications laid down for the appointment as Librarian. The petitioner was not qualified to be appointed as Librarian as per the norms of 5th Pay Commission, as he has not secured requisite marks i.e. 55% marks in M.Lib. It is true that the advertisement was issued mentioning therein necessary qualification B. Lib. for the appointment as Librarian, and therefore, the petitioner is justified in saying that the post of Librarian advertised ought to have been filled in

keeping in view his qualification as per the advertisement dated 14.06.1999.

11] It appears that the petitioner filed Civil Application No.1115 of 2004 taking exception to the advertisement published in Dainik 'Lokmat' on 15th March, 2003, calling applications from the candidates for the post of Librarian by respondent no.2. However, from perusal of the record of the Petition, it appears that the petitioner did not make an attempt to get that application circulated for hearing. It was crucial stage for the petitioner to move this Court so as to seek appropriate relief in terms of prayer clauses-B and C in the said application. Unfortunately, no steps were taken, and consequent upon issuance of such advertisement by respondent no.2 on 15th march, 2003, respondent no.2 might have appointed some other candidate on the post of Librarian. In the present Petition, such appointed candidate, if any, is not made party. It further

appears that when the Petition was taken up for hearing on 25th August, 2014, none appeared for the petitioner, and therefore, the Petition was dismissed in default, and consequently, Civil Application was disposed of. Thereafter, by order dated 22nd September, 2017, the Civil Application filed by the petitioner for restoration of the Petition was allowed, and accordingly, the Writ Petition was restored to its original file.

12] Taking over all view of the matter, in our considered view, the relief as prayed by the petitioner cannot be granted.

13] During the course of hearing, learned counsel appearing for the petitioner in the alternate submitted that without fault of the petitioner, the petitioner has to suffer, and therefore, he is entitled for the compensation. It appears that the Petition was filed and was circulated for admission on 27th November, 2000, and the Division Bench [Coram : B.H.Marlapalle &

N.V.Dabholkar, JJ.] passed the following order:

The Petition is based on the Government Resolution dated 11th December, 1999 copy of which has not been filed. No urgency. Petition to appear in regular course.

14] The another Division Bench [Coram : R.M.Lodha & A.B.Naik,JJ.] on 10th June, 2002, issued 'Rule' in the Petition. Thereafter, the matter was called out for final hearing on 25th August, 2014, however, none appeared for the petitioner, as a result the Petition was dismissed. There are no pleadings or prayers in the Petition for the compensation. It is also not clear that against whom the petitioner is seeking direction for compensation.

15] In the light of discussion herein above, we are unable to persuade ourselves to grant any relief in favour of the petitioner, hence the Petition stands rejected. Rule stands discharged.

16] In view of rejection of Writ Petition No. 4809 of 2000, Civil Application No.1115/2004 does not survive, and the same stands disposed of.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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