

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

Writ Petition No. 2012 of 2007

* Gulabrao s/o. Dhanraj Wagh,
Age 45 years,
Occupation : Service,
R/o. 17, Yamunai, D.D. Nagar,
Parola, Taluka Parola,
District Jalgaon. **.. Petitioner.**

Versus

- 1) Kisan Vidya Prasarak Sanstha,
Parola, District Jalgaon
Through its President.
- 2) The Principal
Kisan College, Parola,
Taluka Parola, Dist Jalgaon.
- 3) The North Maharashtra University,
Jalgaon,
Through its Registrar.
- 4) The Joint Director of Education,
(Higher Education Grants)
Jalgaon, District Jalgaon.
- 5) Nandulal s/o Bhabut Patil,
Age 40 years,
Occupation : Service,
R/o C/o Kisan College Parola,
Taluka Parola, District Jalgaon. **.. Respondents.**

Shri. L.V. Sangit, Advocate, for petitioner.

Shri. R.J. Godbole, Advocate, for respondent Nos.1 and 2.

Shri. Y.B. Bolkar, Advocate, holding for Shri. R.B.
Raghuwanshi, Advocate, for respondent No.3.

Respondent No.4 - served.

Shri. C.V. Dharurkar, Advocate, for respondent No.5.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 20 MARCH 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed under Articles 226, 14 and 21 of the Constitution of India to challenge the decision of the Management Council of respondent No.3-University dated 10-10-2006 communicated to the petitioner on 14-12-2006, for direction to the management of the college to give promotion to the petitioner to the post of Assistant Librarian with effect from academic year 2000-2001 and also for direction to pay the difference of salary. By making amendment alternate relief of compensation is claimed. Both the sides are heard.

2) The petitioner was appointed as Clerk by respondent No.2 on 10-7-1989 initially for the period of one year and then he was continued on the same post. It is his contention that he was appointed in Library section of respondent No.2 college. It is the case of the petitioner

that in the year 1997 he took admission for B.Lib and Information Science course after taking permission of respondent management and he passed the said course in May 1999.

3) It is the case of the petitioner that in the academic year 2000-2001 the college had strength of more than 2000 students so one post of Assistant Librarian became available on the establishment of the college. It is contended that there was already Government Resolution of the State Government dated 10-7-1996 in that regard and the Government Resolution provides for filling of the post by promotion of employee already working on the establishment having necessary qualification. It is the contention of the petitioner that without following due procedure and without advertising the post the management illegally appointed respondent No.5 on the post of Assistant Librarian in the year 1997 when the post was not available. It is his contention that there was no approval to the appointment of respondent No.5. It is the contention of the petitioner that when the post became available, he requested the management to

give him that post but the management did not give any response. It is contended that he approached the Grievance Committee of the University in the year 2006 and the Grievance Committee directed the management to give promotion to the petitioner by giving him the post of Assistant Librarian. It is contended that the management is not following the procedure and it is not giving him promotion and so the petition was required to be filed.

4) Respondent No.5, the person to whom the post was given in the year 2006, has filed reply affidavit and he has contended that he passed his B.Lib. course prior to the petitioner and so he was appointed on the post of Assistant Librarian. He has contended that the petitioner is guilty of laches and he did not approach the Court immediately and so no relief can be granted to him.

5) The University has filed reply affidavit and it has supported the petitioner.

6) The management has filed reply affidavit and the management has supported the respondent No.5.

7) This Court has carefully gone through the Government Resolution due to which one post of Assistant Librarian came to be created on the establishment of the respondent-college. This Government Resolution dated 10-7-1996 shows that employees who are already working with the educational institution and who were holding necessary qualifications can be appointed on the said post by giving them promotion. If there is no such employee available then it was possible to appoint another person by nomination. It is not disputed that in the year 2000-2001 the strength of the students was sufficient for giving one appointment on the post of Assistant Librarian. It is not disputed that the Grievance Committee which is a statutory committee created under the Statutes of the University prepared report that the post had become available for the academic year 2000-2001. The Grievance Committee heard everybody. The petitioner was senior to the other employees and he was qualified in the year 1999 and so he was entitled to be considered for giving him promotion to the said post. Prior to year 2000-2001 there was no post sanctioned and so there was no question of giving appointment on the said post and this circumstance

is considered by the Grievance Committee. The record shows that appointment letter was given to respondent No.5 to work as Clerk though in Library and he was not Assistant Librarian. First time in the year 1997 some record was created to show that his appointment was on the post of Assistant Librarian. The management showed his appointment on the post created in the year 2006. There is no record of the process which is required to be followed by the management for giving promotion to the aforesaid post. In ordinary course the petitioner would have got promotion to the said post due to seniority.

8) Though there are aforesaid circumstances, the submissions made show that the petitioner is about to retire within one month. In ordinary course he could have been given promotion in the year 2000-2001. Considering the difference of pay for the two posts like Clerk and Assistant Librarian and the fact that there was pay revision two times during this period, this Court holds that, the petitioner needs to be compensated by the management as it was the fault of the management of not following the procedure for giving the promotion. On this

point both the sides are heard. Though the amount can be much more than Rs.1.75 lakh, this Court has formed opinion that the amount of Rs.1.75 lakh needs to be paid to the petitioner. He also did not approach this Court immediately after the year 2000 though he approached this Court after giving of the appointment to respondent No.5 by the management. In the result, following order :

9) The petition is allowed. Respondent-management of the college do pay to the petitioner an amount of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand Only) as compensation. The amount is to be deposited in this Court within 45 days from today. If the amount is not deposited within 45 days, the amount shall carry interest at the rate of 8% per annum. After depositing of the amount, the petitioner will be entitled to withdraw the amount. Rule made absolute in the above terms.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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