

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

WRIT PETITION NO.2875 OF 2015

Babu S/o Thawara Chavan

Age:- 50 years, Occu:- Service

R/o. Kumar Niwas, Tilak Nagar Road,

Peer Nagar, Nanded.

..PETITIONER

VERSUS

- (1) The State of Maharashtra,
Through Secretary
Higher and Technical Education Department,
Mantralaya, Mumbai;
 - (2) The Director of Technical Education,
3, Mahapalika Marga, VT, Mumbai – 400 001;
 - (3) The Deputy Director of
Higher and Technical Education,
Divisional office at Aurangabad;
 - (4) Principal,
Sharda Bhavan Education Society's,
Nanded Pharmacy College, Sham Nagar,
Nanded.
- ..RESPONDENTS

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Ms. Prakashsingh B. Patil, Advocate for the
Petitioner.

Mr. K. N. Lokhande, AGP for Respondent Nos.1 to 3.

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**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

Closed for Orders on : 30.07.2018.

Order Pronounced on : 05.09.2018.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner assails the order dated 21.04.2014 passed by Respondent No.2 thereby directing that the post of Office Superintendent shall be filled in by nomination and not by promotion.

2. The petitioner claims to be working as an Account Clerk with effect from 01.04.1996 with Respondent No.4-Institution. In the year 2014, the post of Office Superintendent became vacant on account of the retirement of the person working on the said post. The petitioner seeks promotion to the post of Office Superintendent.

3. Mr. Patil, learned counsel for the petitioner submits that the petitioner possess the educational qualification for the post of Office Superintendent. The post of Office Superintendent is available for promotion to the petitioner, but the Respondent No.2 has given directions to Respondent No.4-College to fill up the said post by direct recruitment under order dated 21.04.2014, the same is illegal. The learned counsel submits that employees of other institutions who were working as an Account Clerk have been promoted as Office Superintendent, while petitioner is deprived of the same. According to the learned counsel the pay scale of an Account Clerk and Junior Clerk cum Typist is same. The Office Superintendent would be

promotional post for the persons working as Clerk cum Typist and/or Account Clerk. According to the learned counsel, a person namely Mr. Laxman Kulkarni was working as an Account Clerk and was promoted as Office Superintendent on 25.04.2007 in Shivaji Institute of Pharmacy. The Petitioner is discriminated.

4. The learned A.G.P. submits that the petitioner was initially appointed as a Peon and was promoted as an Account Clerk on 01.04.1996, as he acquired a prescribed educational qualification. The petitioner is given benefit of time bound promotion scheme after completing 12 years service on the post of Account Clerk. The staffing pattern in the Government Aided Diploma Pharmacy Institute has been revised under Government Resolution dated 01.04.2004. In the revised staffing pattern, the posts of Senior Clerk are abolished and instead of that Office Superintendent Class-III post is newly created. The post of Office Superintendent with Respondent No.4 is vacant. The post of Office Superintendent is single post. When the post was newly created, it was filled by senior most employee on the post of Senior Clerk, who possessed the required qualification as well as seven years experience on the post of Clerk. He was superannuated, then alternatively the post of Office Superintendent is required to be filled by nomination. The petitioner is not working on the supervisory post. The post of Office

Superintendent is to be filled alternatively by promotion and nomination. The promotion of Mr. Kulkarni with Shivaji Institute of Pharmacy was as a special case, wherein the persons of other posts were required to be absorbed. The learned A.G.P. further submits that the appointment to the post of Office Superintendent is governed by the Recruitment Rules, 1964 and the feeder cadre for the post of Office Superintendent is provided in those Rules. As the Petitioner is just an Account Clerk and the same is equivalent to Junior Clerk, he cannot be considered for the promotion of Office Superintendent.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. The appointment of a suitable person for the post of Office Superintendent is governed by the Recruitment Rules framed and sanctioned by Government under Resolution dated 09.10.1964. The said Rules reads thus:-

"Recruitment Rule for the post of Superintendent in the office of the Directorate of Technical Education.

Appointment to the post shall be made either

(a) by promotion of a suitable person from the clerical staff under the department of Technical Education as a whole.

OR

(b) By nomination from among candidates who:

(i) Unless already in the service of the Government of Maharashtra are not more than 28 years of age and

(ii) Possess bachelor's degree in Arts, Sciences, Commerce or Law of a recognized University and have experience for not less than three years in administrative matters and/or accounts work in a Government office or Undertaking or a big commercial establishment.

OR

(iii) have passed S.S.C. Examination of the Maharashtra State, S.S.C. Examination Board or a qualification recognized equivalent to it by the Government of Maharashtra or higher qualification and experience for not less than seven years in noting and drafting in clerical post preferably in a Government Department.

2. The ratio of appointment by promotion and nomination shall be 50:50."

7. The ratio for appointment by promotion and nomination to the post of Office Superintendent shall be 50:50 as per Clause '2' of the said Rules reproduced (supra). The petitioner is functioning as an Account Clerk with Respondent No.4 since 1996. In the affidavit filed by Respondent, it is stated that the post of an Account Clerk is equivalent to Junior Clerk. The Petitioner can be considered in the clerical cadre. The petitioner is working in the clerical cadre since the year 1996. If there is conflict between the Rules and Executive Instructions, certainly the Rules would prevail.

8. The Rules provide that the ratio of appointment by promotion and nomination for the post of Office Superintendent shall be 50:50. The Rules will have to be followed.

9. We had called for the information from the Respondent regarding the feeder cadre for the post of Office Superintendent. The Administrative Officer in the office of Joint Director, Technical Education, Regional Office, Aurangabad in its affidavit has replied the same as under:

"I say that so far as first point (a) is concerned, the feeder cadre for the post of Office Superintendent is as follows:-

- (1) Junior Clerk in Pay Band 5200-20200/- with Grade Pay 1900/-.
- (2) Senior Clerk in Pay Band 5200-20200/- with Grade Pay 2400/-.
- (3) Head Clerk in Pay Band 9300-34800/- with Grade Pay 4200/-.
- (4) Office Superintendent in Pay Band 9300-34800/- with Grade Pay 4300/-."

10. It is submitted that the post of Account Clerk held by the petitioner is equivalent to Junior Clerk. The petitioner can be considered in clerical cadre and has 7 years experience in the clerical cadre. The Rule only prescribes that appointment to the post of Office Superintendent shall be made by promotion of a suitable person from the clerical staff under the Department of Technical Education or by nomination. The petitioner can be considered to be in the clerical

staff. It is for the Respondents to consider whether the petitioner is a suitable person, of course, if the said post is to be filled in by promotion as per the Rules.

11. The Respondents will have to consider as to the post which has become vacant in the year 2014 upon superannuation of a person has to be filled in by promotion or nomination.

12. Considering the above, we pass the following order:

ORDER

(1) Respondent Nos.2 and 3 shall take decision as to whether the post of Office Superintendent lying vacant with Respondent No.4 can be filled in by promotion and/or nomination considering the Recruitment Rules for the post of Office Superintendent sanctioned by the Government under Resolution dated 09.10.1964 annexed at Exhibit "R1" with the affidavit-in-reply of the Administrative Officer in the Office of Joint Director, Technical Education, Regional Office, Aurangabad. The said decision shall be taken within (03) three months.

(2) If, Respondent Nos.2 and 3 take decision to fill in post by nomination, then petitioner

can participate in the said process, if he is qualified and permissible. If, Respondent Nos.2 and 3 take a decision that the said post is to be filled in by promotion, then Respondent Nos.2 and 3 shall consider the case of the petitioner for promotion to the said post.

13. Writ Petition accordingly disposed of with aforesaid observations and directions.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/July-18

Devendra
Nandkumar
Kale

Digitally signed by
Devendra
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Date: 2018.09.06
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