

UNREPORTED

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

BENCH AT AURANGABAD.

WRIT PETITION NO.4989 OF 2015

Maharashtra Rajya Aarogya
Seva Karmachari Sanghatana,
through its Vice President,
General Secretary at present
Nandakumar Wamanrao Kulkarni,
Age 54 years, Occ.Service,
R/o G-3,C-68, New Hanuman
Nagar, Beside N-4, CIDCO,
Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra
through the Secretary,
Public Health Department,
Mantralaya, Mumbai-400 032.
2. The Director of Health
Services, St. Georges Hospital,
Compound, V.T., Bombay-400 001.
3. The Maharashtra Public
Service Commission, through
its Secretary, Third floor,
Bank of India Building,
M.G.Road, Fort, Mumbai-400 001.
4. Nilkanth S/o Pandurang Nagpurkar,
Age 51 years, Occ.Service as
Non-Medical Assistant,
Urban Leprosy, Unit No.III,
Matakacheri, Nagpur,
Tq. and Dist.Nagpur.
5. Shaikh Hasina Shaikh Sikandar,
Age 36 years, Occ.Service as
Staff Nurse, Civil Hospital,
Jalna, Tq. and Dist.Jalna.

6. Babasaheb S/o Raosaheb Rakh,
Age 36 years, Occ.Service as
M.P.W., working with the office
of District Malaria Office,
Tq. and Dist.Beed.

7. Sunil S/o Motiram Gaikwad,
Age 42 years, Occ.as above.

8. Vishnu S/o Eknathrao Ghuge,
Age 41 years, Occ.Service as
Non Medical Supervisor, Working
with the office of Asstt.
Director of Health Services,
(Leprosy), Hingoli,
Tq. and Dist.Hingoli.

9. Rajesh S/o Anna Dhutadmal,
Age 42 years, Occ.Service as
M.P.W. working with the office
of District Malaria Officer,
Beed. Tq. and Dist.Beed. ... Respondents.

...
Mr.A.S.Deshpande, advocate for the petitioner.
Mr.A.S.Shinde, A.G.P. for the State.
Mr.S.S.Thombre, advocate for Respondent Nos.4 to
9.

...
WITH
WRIT PETITION NO.10224 OF 2015

1. Dr.Shivprasad S/o Sriramji Daga,
Age 37 years, Occ.Service as
Laboratory Assistant at College
of Veterinary And Animal Sciences,
Udgir on Deputation to the Post
of Laboratory Assistant at
College of Veterinary & Animal
Sciences, Parbhani, R/o Trimurti
Nagar, Parbhani.

2. Dr. Tanveer S/o Fatema Siddiqui,
Age 42 years, Occ.Service as
Laboratory Assistant At College
of Veterinary & Animal
Sciences, Parbhani R/o Gadiwan

Mohall, Near United Technical
Institute, Parbhani.

3. Dr.Laxmikant S/o Ashokrao
Pangaonkar, Age 36 years, Occ.
Service as Farm Assistant
At College of Veterinary &
Animal Sciences, Parbhani,
R/o Trimurti Nagar, Parbhani. ... Petitioners.

Versus

1. The State of Maharashtra,
through the Secretary
to the Government of Maharashtra
In the Department of Animal
Husbandary, Dairy Development
and Fisheries, Mantralaya,
Fort, Mumbai.

2. The Commissioner of Animal
Husbandary, Dairy Development
and Fisheries, Maharashtra
State, Central Building,
Pune.

3. The Maharashtra Public Service
Commission, thorough its
Secretary, Bank of India
Building, 3rd floor, Mahatma
Gandhi Road, hutatma Chowk,
Mumbai-400 001.

4. The Registrar,
Maharashtra Animal and Fishery
Sciences University, Near
Hanuman Mandir, Futala Road,
Telangkhedi, Nagpur. ... Respondents.

...
Mr.Ajay Shinde, advocate for the petitioners.
Mr.A.S.Shinde, A.G.P. for the State.
Mr.P.G.Rodge, advocate for Respondent No.4.

...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

**Reserved on : 30.01.2018.
Pronounced on : 28.02.2018.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. Both these petitions involve common question, as such are decided together.

2. Writ Petition No.4989/2015 is filed by Sanghatana, advocating the cause of Zilla Parishad employees who have undergone Post Graduate Diploma in Health Education as in service candidates. The advertisement dated 4.3.2008 published by Respondent No.3 therein for filling up 30 posts of District Extension and Media Officer, General State Services Group B, is challenged, so also the judgment of the Tribunal.

3. In Writ Petition No.10224/2015, the petitioners assail the letter dated 27.11.2014, thereby communicating the M.P.S.C.that employees of Maharashtra Animal and Fishery Science University are not Government employees and are not entitled for age relaxation. The petitioners

also seek directions as against Respondent No.3 M.P.S.C. to consider the petitioners as Government employees by giving age relaxation.

4. In Writ Petition No.4984/2015, the petitioner therein had approached the Maharashtra Administrative Tribunal, challenging the advertisement dated 4.3.2008. The Original Application is dismissed. Aggrieved thereby, the Writ Petition is filed.

5. The learned advocate for the respective Writ Petitioners strenuously contend that :

a) Age relaxation is provided to Government servants, whereas Zilla Parishad employees and employees of the Maharashtra Animal and Fishery Science University are not given the benefit of age relaxation. The same amounts to discrimination. The employees of the University and the Zilla Parishad are also similarly situated as Government employees and they are to be treated as Government employees.

b) As per Rule 2(b) of the Maharashtra Civil Services (Conduct) Rules, 1979, Government Servant means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra and includes a Government servant whose services are placed at the disposal of a company, corporation, organisation, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the consolidated Fund of the State. It is further submitted that as per Rule 8 of The Maharashtra Zilla Parishads District Services Rules, 1968 the Government Resolution, orders, notifications issued in respect of Government employees are also applicable to the Zilla Parishad employees and the University employees.

6. To buttress the submission that Government employees and the Zilla Parishad employees are similar, the learned advocate rely on the judgment of the Division Bench of this Court in a case of **"Kazi Moinuddin S/o Kazi Anwaruddin Vs. The State of Maharashtra and**

others" reported in **1994 (4) Bombay Cases Reporter 496**, so also another judgment of the Bombay High Court, Bench at Aurangabad in a case of **"Md. Ibrahim Md. Vazir and another Vs. The State of Maharashtra and others"** reported in **2002 (Supp.) Bombay Cases Reporter 864**. The learned counsel further submits that one of the employee Dr.R.L.Chopde, who was serving as Laboratory Assistant in Respondent No.4 University was selected for the post of Live Stock Development Officer through M.P.S.C. and took charge as Live Stock Development Officer Grade-I on 1.12.2007. The State Government has sanctioned him pension considering him to be a Government Servant since the day he was working as Laboratory Assistant. The University employees are withdrawing salary as per 6th Pay Commission. The salary is fully funded by the State Government. 100% salary is paid by the Government to the petitioners/employees of the University. The petitioners are to be presumed as Government servants.

7. It is further submitted that there is

no reason to treat the University and Zilla Parishad employees differently than the Government employees. The differential treatment is discriminatory and violative of Article 14 of the Constitution of India. The employees of the Zilla Parishad and the University be given full age relaxation as is given to Government employees.

8. Learned A.G.P. submits that employees of the State Government and the employees of the local self-Government and University form part of separate class. Differential treatment for different classes is permissible. The learned A.G.P. relies on the judgment of this Court in Writ Petition No.4005/2010 dated 30.9.2010 and another judgment of the Division Bench of this Court in Writ Petition No.729/1994 dated 7.6.2010. It is further submitted by learned A.G.P. that the employees of the University are not Government employees, as such are not entitled to avail upper age limit of relaxation.

9. We have considered the submissions

canvassed by the learned counsel for respective parties.

10. The moot question raised in these petitions is grant of age relaxation to the employees of the Zilla Parishad and University in recruitment process as is made applicable to the Government employees.

11. The gravamen of the petitioners' case is that the employees of the University and the Zilla Parishad are the Government employees and/or are to be treated alike the Government employees.

12. The employees of the Government and the employees of the local body, University form different class. The employees of the University and the Zilla Parishad are governed by their respective Recruitment Rules and the Government employees are governed by the Recruitment Rules applicable to them. The Recruitment Rules for both are different. Two employees in different sectors governed by different set of Recruitment

Rules can not be treated alike. The employees of State sector are governed by different set of Rules than the employees of the Zilla Parishad and University. The employees of both the sectors can not be treated to be in similar situation and alike. As such can not be treated in same class.

13. In the case of **"Kazi Moinuddin S/o Kazi Anwaruddin Vs. The State of Maharashtra and others"** (supra), this Court was called upon to interpret the memorandum of Government of Maharashtra dated 7.8.1974, governing the status of employees of Ex-Nizamiya State merged in State of Maharashtra. The Court was considering that Munshi examination passed by a person from Ex-Nizamiya University would be deemed to be treated as trained teacher. In that context the observation was made that the memorandum applies to employees of Zilla Parishad and Government alike and employees are equal and alike in similar situation. The judgment in case of **"Md.Ibrahim Md. Vazir and another Vs. The State of Maharashtra and others"** (supra) is on

altogether different context. In that case, this Court came to the conclusion that requirement of three years continuous service in a particular Grade is arbitrary on the ground that Head Accountant or Divisional Accountant of Zilla Parishad already puts in service of not less than three years and the Rule governing the employees of Government sector did not provide the said restriction.

14. Rule 8 of the Maharashtra Zilla Parishads District Services Rules, 1968 relied by the petitioners would not enure to the benefit of petitioners. Rule 8 provides that subject to the rules made under clause (a) of Section 248, if any, and sub-rule (2) of this rule, the provisions of [the Maharashtra Civil Services Rules (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981; the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, and the Maharashtra Civil Services (Pay) Rules, 1981, as amended from time to time and for the time being in force in this State including all Government

Orders and instructions relating to the matters provided in the said rules], relating to the terms and conditions of service in respect of matters (other than those hereinbefore provided and payment of other allowances, if any) shall *mutatis mutandis* apply in relation to such matters of Parishad employees as they apply in relation to members of the services of the State Government. It is only the Government orders and instructions relating to matters provided in the Rules as enumerated in Rule 8 would apply to the Parishad employees. It is not pointed out that the age relaxation to the Government employees is provided either under the Maharashtra Civil Services Rules (Joining Time, Foreign service and Payments during Suspension, Dismissal and Removal) Rules, 1981 or under Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and the Maharashtra Civil Services (Pay) Rules, 1981. Rule 8 would be limited to the Government orders and instructions issued under the Rules enumerated in Rule 8 and no further.

15. Rule 2(b) of the Maharashtra Civil Services (Conduct) Rules, 1979 would apply to those persons appointed to any civil service or post in connection with the affairs of the State of Maharashtra and includes a Government servant whose services are placed at the disposal of a company, corporation, organisation, local authority or any other Government. For applicability of Rule 2(b) the person should essentially be appointed by the State of Maharashtra and thereafter his services are placed at the disposal of a local authority or a company or a corporation or an organisation. Rule 2(b) would not apply to those who are appointed by the Zilla Parishads or the University.

16. Government employees are provided age relaxation. However, no such Order or Resolution is pointed out providing age relaxation to the Zilla Parishad employees and the University employees. In absence of any such Rule, Regulation, Notification or Resolution, the age relaxation can not be ipso facto granted to the

employees of Zilla Parishad and University.

17. In light of the above, no case for interference is made out. The Writ Petitions are dismissed. No costs.

Sd/-

(A.M.DHAVAL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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