

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6656 OF 2013

1. Smt. Sunanda Soma Nikam
Age 47 years, Occu. Service,
R/o. 35-A, Krishna Kamal Housing
Society, Near Golibar Tekdi,
Jamanagiri Road,
Dhule 424001.
2. Smt. Nita Laxman Kale,
Age 50 years, Occu. Service,
R/o. Near Suman Nagar, Satana
Road, Mukka Post Pimpalner,
Taluka Sakri, District Dhule.
3. Smt. Shobha Ramesh Borse,
Age 45 years, Occu. Service,
R/o. 21, Sai-Ekta Nagar,
Behind Sinchan Bhavan,
Sakri Road, Dhule,
District Dhule.

....Petitioners.

Versus

1. The State of Maharashtra
Through Secretary
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.
2. The Director of Health Services,
Directorate of Health Services,
Mantralaya, Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Dhule,
District Dhule.

....Respondents.

WITH
CIVIL APPLICATION NO. 2587 OF 2014
IN

WRIT PETITION NO. 6656 OF 2013

1. Sow. P.V. Deshmukh @
Pramila Vijay Thakre,
Age 55 years, Occu. Service,
R/o. Health Assistant (Female),
Primary Health Centre, Warkhadi,
Tq. Pachora, Dist. Jalgaon.
2. Sow. Anusaya S. Khambalkar,
Age 57 years, Occu. Service,
R/o. Health Assistant (Female),
Primary Health Centre, Nashirabad,
Tq. & Dist. Jalgaon.
3. Sow. Unda D/o. Govind Kale @
Hemlata Kishor Tokekar,
Age 50 years, Occu. Service,
R/o. Health Assistant (Female),
Primary Health Centre, Kalanda,
Tq. & Dist. Jalgaon.
4. Sow. Kusum Narayan Sarode,
Age 54 years, Occu. Service,
R/o. Health Assistant (Female),
Primary Health Centre, Lohara,
Tq. Raver, Dist. Jalgaon.
5. Sow. Snehlata Narsing Apte,
Age 57 years, Occu. Service,
R/o. Health Assistant (Female),
Primary Health Centre, Patoda,
Tq. Chalisgaon, Dist. Jalgaon.
6. Sow. Dipti Dipak Avhad,
Age 54 years, Occu. Service,
R/o. Health Assistant (Female),
Primary Health Centre, Girad,
Tq. Bhadgaon, Dist. Jalgaon.

....Applicants.**Versus**

1. The State of Maharashtra
Through Secretary
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.

2. The Director of Health Services,
Mantralaya, Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Dhule,
District Dhule.

....Respondents.

Mr. Amit S. Savale, Advocate for petitioners.
Mr. Y.G. Gujrathi, AGP for respondent Nos. 1 and 2.
Mr. D.S. Bagul, Advocate for respondent No. 3.
Mr. K.M. Nagarkar, Advocate for applicants/intervenors.

WITH
WRIT PETITION NO. 8722 OF 2013

1. Smt. Sandhya Arjun Tayade,
Age 50 years, Occu. Service,
R/o. Gadkari Nagar, Behind Vikas
Dairy, Ring Road, Bhusawal,
District Jalgaon.
2. Smt. Sunanda Jagannath Sonawne,
Age 45 years, Occu. Service,
R/o. Supari Baug,
Behind Vijayanand Hospital,
Jamner, District Jalgaon.
3. Smt. Kalpana Gajanan Barde,
Age 46 years, Occu. Service,
R/o. Primary Health Centre,
Thorgavahan, Taluka Raver,
District Jalgaon.
4. Smt. Kalpana Laxman Gaikwad,
Age 46 years, Occu. Service,
R/o. TMO Office, Amalner,
Taluka Amalner, Dist. Jalgaon.
5. Smt. Jayashri Parashram Ikhankar,
Age 46 years, Occu. Service,
R/o. Plot No. 9, Gat No. 83,
Kalyani Nagar, Dadawadi,
Jalgaon, District Jalgaon.
6. Smt. Savita Namdeo Patil,

Age 45 years, Occu. Service,
R/o. TMO Office, Jalgaon,
Taluka and District Jalgaon.

7. Smt. Alka N. Narkhede @ Bagshe,
Age 50 years, Occu. Service,
R/o. Plot No. 23, New Parvati Kale
Nagar, Mohadi Road, Jalgaon,
Taluka and District Jalgaon.
8. Smt. Shobha Liladhar Chaudhary,
Age 45 years, Occu. Service,
R/o. Vimal Patil Nagar, Jugadevi
Road, Bhusawal, Taluka Bhusawal,
District Jalgaon.
9. Smt. Asha Rambhau Kuyate,
Age 40 years, Occu. Service,
R/o. TMO Office, Jamner,
District Jalgaon.
10. Smt. Kokila Bhaskar Toke,
Age 42 years, Occu. Service,
R/o. TMO Office, Raver,
District Jalgaon.
11. Smt. Neha Ulhas Ingale,
@ Ruth Robin Thomas,
Age 46 years, Occu. Service,
R/o. Primary Health Centre, Neri,
Taluka Jamner, District Jalgaon.

....Petitioners.

Versus

1. The State of Maharashtra
Through Secretary
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.
2. The Director of Health Services,
Directorate of Health Services,
Mantralaya, Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon.

....Respondents.

Mr. Amit S. Savale, Advocate for petitioners.
Mr. Y.G. Gujrathi, AGP for respondent Nos. 1 and 2.
Mrs. Chaitali Kutti, Advocate for respondent No. 3.

WITH
WRIT PETITION NO. 8994 OF 2013

Smt. Usha Sunil Kalbhor,
Age 47 years, Occu. Service,
R/o. Plot No. 25, Sahakar Nagar,
Saveri, Ahmadnagar,
District Ahmadnagar.

....Petitioner.

Versus

1. The State of Maharashtra
Through Secretary
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.
2. The Director of Health Services,
Directorate of Health Services,
Mantralaya, Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Ahmadnagar,
District Ahmadnagar.

....Respondents.

Mr. Amit S. Savale, Advocate for petitioners.
Mr. Y.G. Gujrathi, AGP for respondent Nos. 1 and 2.
Mr. S.T. Shelke, Advocate for respondent No. 3.

WITH
WRIT PETITION NO. 2129 OF 2014

1. Smt. Sushama Eknath Mahajan,
Age 42 years, Occu. Service,
R/o. Primary Health Centre,
Dhamangaon, Taluka Jalgaon,
District Jalgaon.
2. Smt. Mandakini Waghulade,
Age 50 years, Occu. Service,

R/o. Primary Health Centre,
Uchanda, Taluka Muktainagar,
District Jalgaon.

3. Smt. Jyoti Ankushrao Jagtap,
Age 44 years, Occu. Service,
R/o. Primary Health Centre,
Varadsim, Taluka Bhusawal,
District Jalgaon.
4. Smt. Pushpa Ravindra Shinkar
@ Pushpa Damu Deshmukh,
Age 44 years, Occu. Service,
R/o. Primary Health Centre,
Bhelane, Taluka Parola,
District Jalgaon.
5. Smt. Sunanda Pandurang Borse,
Age 43 years, Occu. Service,
R/o. Primary Health Centre,
Talegaon, Taluka Chalisgaon,
District Jalgaon.
6. Smt. Shalini Jagannath Attarde
@ Shalini Pitambar Rane,
Age 43 years, Occu. Service,
R/o. Primary Health Centre,
Bhadali, Taluka Jalgaon,
District Jalgaon.

....Petitioners.

Versus

1. The State of Maharashtra
Through Secretary
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.
2. The Director of Health Services,
Directorate of Health Services,
Mantralaya, Mumbai.
3. The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon.

....Respondents.

Mr. Amit S. Savale, Advocate for petitioners.
Mr. Y.G. Gujrathi, AGP for respondent Nos. 1 and 2.
Mrs. Chaitali Kutti, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

**RESERVED ON : 18/04/2018
PRONOUNCED ON : 24/04/2018**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) All the petitions are filed under Articles 226, 14 and 16 of the Constitution of India and also under the provisions of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 and the Rules for recruitment framed thereunder. Declaration is claimed that the Government Resolution (hereinafter referred to as 'GR' for short) dated 5.12.2012 issued to amend the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 to the extent of petitioners needs to be struck down as it is in violation of Articles 14 and 16 of the Constitution of India and it has violated the rights given to the petitioners. The relief is claimed for giving directions to the respondent/State and Zilla Parishads to see that promotions are given to the petitioners to the post mentioned in the aforesaid GR as per the seniority. Both the sides are heard. There was intervention application bearing Civil Application No. 2587/2014 in Writ Petition No. 6656/2013 and that is also being decided in the present matter.

2) The petitioners are ladies and on the date of petitions, they were working on the post of Health Assistant in Zilla Parishads. It is their contention that they entered in service as Nurse Midwife (in short 'NM'). It is the contention of the petitioners that there were Health Workers with Zilla Parishads like Nurse Midwife, Lady Health Visitor (in short 'LHV') and Male Health Assistant (in short 'Male HA'). It is contended that subsequently, the cadre of LHV came to be merged in the cadre of Health Assistant (Ladies) and the cadre of NM was also merged in the cadre of Health Assistant (Ladies). It is the case of petitioners that as per service rendered by them and as per the eligibility conditions for getting the post of NM, they were senior to LHV and accordingly, they were shown as seniors to LHV when common seniority list of Health Assistant (Ladies) was prepared.

3) It is the case of petitioners that in the GR under challenge of the year 2012, promotional avenue is created to Health Assistant (Ladies), who were initially appointed as LHV and the petitioners, who had joined service as NM are not shown in the GR and they are excluded. It is contended that the new post, the post of Health Supervisor is shown as promotional post and so, they are entitled to be considered for the said post on the basis of

their seniority. It is contended that in the past, even when LHV were not having necessary qualification, they were not satisfying eligibility conditions, the Government created one cadre for NM and LHV and that was of Health Assistant (Ladies) and now the petitioners are being discriminated by not giving them promotion to the post of Health Supervisor. It is contended that the new policy mentioned in the GR of 2012 has no reasonable basis and there is no rational behind excluding the petitioners from the said GR. The GR is issued to amend the Recruitment Rules for the post of Health Supervisor.

4) The petitioners have given eligibility conditions which were there for getting the post of NM, LHV and Male (HA) in the petitions and they are as under :-

"I. Nurse Midwife (NM) : Three years and six months Diploma in General Nursing and Midwifery after qualifying 12th Science.

II. Lady Health Visitor (ANM/LHV) : 18 months Auxillary Nurse Midwife training after qualifying 10th with registration of Maharashtra Nursing Council or eligible for such registration + have passed exam in six months Promotional Training Course of LHV.

III. Male Health Assistants (MPW) : 12 months

Basic Training Course in Multipurpose Health Worker
after 10th.

The pay scales and grade pays are also different as per the 6th Pay Commission's Report, which are as follows :-

I. For NM:- Pay Scale 9300-34800, Grade Pay-4200

II. For LHV :- Pay Scale 5200-20200, Grade Pay-
2800

5) It is the case of petitioners that though they were selected by the State Government, they were given to Zilla Parishads by transferring them as medical service like operation was to be started at Primary Health Centers. It is contended that the petitioners, who were having aforesaid qualification, were capable to assist doctors in operation theater and so, they were posted in Primary Health Centers on the post of NM. It is contended that subsequently, other cadres like LHV was also posted and then the cadre of Health Assistant (Ladies) was created as mentioned above. It is their contention that if they were repatriated to Government Department, Civil Hospitals after bond period, they would have got the post of even Matron or Incharge prior to the date of petitions. It is contended that they did not get their dues as they were kept in Zilla Parishads and now by the GR under challenge, the promotional avenue is closed to them.

6) The respondent/State has filed affidavit in reply. The State has admitted that in the past, the petitioners were appointed by the State and the petitioners were expected to work during bond period with Zilla Parishads. It is contention of the State that it was possible to repatriate the petitioners to Directorate of Health Services, but they were not repatriated. It is contended that by the GR dated 17.8.2004 option was given by the Government to such employees to join Government Service, but probably the petitioners did not opt for the same and the petitioners continued to work with Zilla Parishads.

7) It is the case of respondent/State that the cadre of NM was declared as 'dying cadre' by the State Government in GR dated 21.9.1993. It is contended that in view of that GR, only those employees, who were working as NMs were to be allowed to work on the same post till their retirement date and after that, no new NMs were to be appointed. It is contended that by GR dated 20.5.2009, the revised pay scale on the basis of 6th Pay Commission's Report was made applicable to Zilla Parishads and as per the said pay scales, NMs get scale of Rs. 9300-34800 and Grade Pay of Rs. 4200. It is contended that the same pay scale is available for Health Supervisor and so, it cannot be said that Health

Supervisor is promotional post for petitioners.

8) By filing rejoinder, the petitioners have contended that they were entitled to get repatriated to Government Service, but that was not done deliberately and as Zilla Parishad required their services and they were kept with Zilla Parishad. It is contended that they had no other option than to work with Zilla Parishad due to orders made by the Government and Zilla Parishad.

9) This Court has carefully gone through the record of appointments and also of confirmation on the posts in respect of the petitioners. The record shows as follows :-

(I) That the petitioners were given appointments in Zilla Parishad, though during bond period.

(II) The initial appointments were on temporary basis.

(III) The bond of two years was obtained.

(IV) Initially appointments were on the post of Nurse (परिचारीका) in the scale of Rs. 1400-2600.

(V) After the bond period was over, the appointments were given to the petitioners on the post of NM (परिचारीका प्रसाविका) in the pay scale of Rs. 1400-2600. There was new staffing pattern and it was made possible to give

postings on such posts if they were available on the establishments of Zilla Parishads. The appointments on these posts were also on temporary nature and the order showed that the petitioners could have been removed by Zilla Parishads without notice. Such undertaking was also obtained from the petitioners.

(VI) In the year 2008 NMs like petitioners were given posting as Health Assistant (Ladies).

(VII) In the year 2008 Zilla Parishad issued orders to show that the appointments of the petitioners were to be shown against permanent post of Health Assistant (Ladies) which is grade II post in Class III, Class 'C'.

(VIII) From the year 2010 all the Zilla Parishads started preparing provisional seniority lists of all Health Assistants (Ladies). The provisional lists were published and objections were called. Almost all the petitioners had joined as NMs prior to 1992 and the date of their entry in service as NM was shown as the date of entry in the cadre of Health Assistant (Ladies).

(IX) As no objections were received to the provisional seniority list, the seniority lists were published. To that also no objections were received and so final seniority lists are confirmed by the Zilla Parishads. The petitioners

are shown senior to the employees who were LHV and who had entered the cadre of Health Assistant (Ladies). Further, those employees were infact junior in service to NMs.

10) The GR dated 21.9.1993 shows that the State Government took a policy decision to change the names of two cadres. The name of Assistant Nurse Midwife was changed to make it Health Worker, but in the pay scale of Rs. 1200-1800. It needs to be kept in mind that petitioners were not Assistant Nurse Midwife, but they were NMs having scale of Rs. 1400-2600. The name of cadre of LHV was changed to make it as Health Assistant (Ladies) and they were given scale of Rs. 1400-2300. In the same GR, the Government declared that cadre of NM was to be treated as 'dying cadre' and no new appointments were to be made in this cadre. In this GR, it was mentioned that even nomenclature of this cadre as 'NM' was not to be changed till the retirement of these employees. After their retirement, the posts which would have become available were to be filled by making appointments of Health Assistant (Ladies). The posts of Health Assistant (Ladies) were to be filled as per the eligibility conditions prescribed in the past for making appointment of LHV. The eligibility conditions are already quoted by this Court. Thus, the employees of cadre of Health

Assistant (Ladies) were to have lower educational qualification in future.

11) The eligibility conditions mentioned for the post of NMs and LHVs were different, but in the year 2008 NMs were shown to be absorbed in the cadre of Health Assistants (Ladies). After that the process of preparation of common seniority list was started as there were initially two cadres like NM and LHV and they had constituted the new cadre viz. Health Assistants (Ladies). It is already observed that the process of preparation of seniority list was started and at the end, in the seniority list prepared for Health Assistants (Ladies), the employees who had entered the service as NMs were shown senior to the employees who were LHVs before entering the cadre of Health Assistants (Ladies).

12) The GR dated 5.12.2012 which is under challenge, amended the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 of APPENDIX V-A, for Rule -1 is as under :-

Sr. No.	Service and Cadre	Post	Qualification for and method of appointment
1	2	3	4
1	District Technical Services	Health Supervisor	(1) Appointment shall be made either.-

	(Group-C) (Health) Grade-1	(a) by promotion from amongst suitable.- (i) Health Assistants in District Technical Service (Group-C), Grade-II who have passed the Secondary School Certificate Examination and have successfully undergone the 12 months' Basic Training Course for Multi-purpose Health Workers or recognised Sanitary Inspector's course or an equivalent course and (ii) Lady Health Visitor in District Technical Service (Group-C), Grade-II, who have passed Secondary School Certificate Examination and have successfully undergone 18 months' ANM training, with registration of Maharashtra Nursing Council or are eligible for such registration, and have passed the Examination held after six months' promotional training course of LHV; (b) by nomination from amongst the candidates who - (i) unless already in the service of Zilla Parishad are not more than 28 years of age; (ii) Possess a degree in Science of a recognised University; and (iii) Successfully undergone the 12 months' Basic Training Course for Multi-purpose Health Workers. (2) The ratio for appointment by promotion and nomination shall be 75:25 and out of the said ratio, the appointment by promotion in sub-rule (a), for clause (i) and clause (ii) of
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			this rule, shall 67:33
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From the aforesaid Rule, Rule (i) need not be considered as it is in respect of Health Assistant (Male) and there is no dispute with Health Assistant (Male). There is dispute only between the petitioners and LHVs, who are now working as Health Assistant (Female). Rule (ii) shows that only LHVs are mentioned in this Rule and only they can get the promotion to the post of Health Supervisor. The other provision of Rule, which is for appointment by nomination can be also seen to some extent, as for getting that post direct recruit needs to possess science degree. The eligibility condition already mentioned shows that for NM the education qualification necessary was 12th science and there was necessity of a Diploma of three years. On the other hand, for Lady Health Worker, the eligibility was the education qualification as 10th standard and then the training like certificate training already quoted. Thus, by this GR, the employees like NMs who are now working as Health Assistant (Ladies) and who are holding higher qualification and who are also seniors are excluded and LHVs are given opportunity of getting promotion to the post of Health Supervisor.

13) For above discrimination, the State Government has

given two reasons, which are being discussed hereinafter. Firstly, it is the contention of the State Government that present pay scale of NMs as per the 6th Pay Commission's Report is Rs. 9300-34800 with Grade Pay of 4200 and the same scale is given for Health Supervisor and so, the petitioners cannot say that they will be getting promotion if they are excluded in aforesaid GR. This contention of the State Government is not acceptable. It is true that the scale of the petitioners is equal to the scale of Health Supervisor, but the Rules of Recruitment show that post of Health Assistant (Ladies) which the petitioners are holding at present is shown as Grade II post in Class 'C'. The post of Health Supervisor is treated as Grade I post of Class 'C'. The submissions made show that the Health Supervisor will be discharging supervisory duties over other technical staff including Health Assistant (Ladies). Due to these circumstances, it cannot be said that the post of Health Supervisor is not promotional post to the petitioners. Further, in the GR itself it is mentioned that the post of Health Supervisor is promotional post for Health Assistant (Ladies). So, the aforesaid contention of the Government cannot be accepted.

14) The second contention of the Government is that after the bond period of NMs was over, they could have been repatriated to Directorate of Health Services. It is contended that even option

was given to NMs to get repatriation and so, it cannot be said that they were appointed by Zilla Parishads and they are entitled to get the promotion to the post of Health Supervisor. This defence is also not tenable.

15) The aforesaid defence is not tenable firstly for the reason that the orders of appointments issued in favour of petitioners as NMs show that they were shown to be transferred to Zilla Parishad after the bond period was over. There were posts of NMs on the establishments of Zilla Parishads and the petitioners were absorbed against those posts. Thus, after bond period was over, there was no option left with the petitioners to get repatriation and on the contrary, specific orders were issued against them that they were absorbed on the establishments of Zilla Parishads. It appears that subsequently, GR dated 17.8.2004 was issued as representations were made for aggrieved that they were not repatriated to the Government Department. After that the Government took the decision, which is mentioned in this GR and it was made possible to repatriate NMs subject to following conditions :-

- (i) That, they were not to claim seniority in Government Service after repatriation and they were to be placed at the bottom of the seniority list already

existing in the Government Department.

(ii) That, the Chief Executive Officer of Zilla Parishad must have given no objection for such repatriation and

(iii) That, after the no objection certificate of Chief Executive Officer, a list of such aspirants was to be prepared and as per their seniority on the list, the repatriation was to be done. Thus, the option was conditional in many ways.

16) It is the case of petitioners that in the year 1994 itself, they had made representations for the repatriation to Government Department, to Civil Hospital, but they were not allowed. Copies of such representations are produced. In reply filed by one Gopichand Birhade, Chief Administrative Officer, in the office of Director of Health Services, Nashik dated 30.4.2014, it is mentioned that the petitioners can be absorbed as 'staff nurse' in Government service. The said post is entry level post and it is mentioned in the affidavit that if the NMs apply, they will be considered for giving such post. This condition again shows that it will be transfer of the petitioners from Zilla Parishad to Government Department and further, they will be losing the seniority and in view of their age, they will not get anything after such transfer to Government Department. The aforesaid submissions and record shows that it was necessary for

the Government and Zilla Parishad to see that the petitioners were repatriated to Government service after the bond period was over, but that was not done and they were kept with Zilla Parishad as Zilla Parishad was in need of their services. For that, the petitioners cannot be blamed.

17) There is one more angle to this matter. Due to aforesaid circumstances, the petitioners have become employees of Zilla Parishads. Zilla Parishads treated them as Health Assistant (Ladies) and the Zilla Parishads have already treated them as senior to LHV, who are working in the cadre of Health Assistant (Ladies). This happened long back. In view of these circumstances, proper justification was necessary from respondents for not mentioning the petitioners in the aforesaid GR. The contentions made in that regard are already mentioned and discussed and this Court has no hesitation to observe that there is no justification for creating a separate class in the cadre of Health Assistant (Ladies) from the present cadre of Health Assistant (Ladies) for giving promotion to the post of Health Supervisor and for not mentioning NMs in the said GR for giving them promotion.

18) On the basis of the record of appointment and also the record of eligibility conditions, inference is easy that at the time of

amalgamation of the two cadres to create the cadre of Health Assistant (Ladies), the petitioners ought to have been treated as senior to the employees, who were LHVs and who were entering in this cadre and Health Assistant (Female). It is already observed that the seniority list is made final. This one more circumstance needs to be considered in favour of the petitioners.

19) Civil Application No. 2587/2014 is filed by many ladies who were in the past working as LHVs and who are now working as Health Assistant (Female). They are opposing the petitions by contending that they entered the service of Zilla Parishad as Auxillary Midwife Nurse (AMN) and they were given the post of Lady Heath Worker by way of promotion. It is their contention that as per the GR dated 21.9.1993, only the intervenors can be treated as employees of Zilla Parishads and not NMs. It is their contention that in GR of 2004 option was given to NMs to get repatriation and go to Government Department, but they did not give such option and so, they cannot be treated as eligible for giving promotion to the post of Health Supervisor which is the post in Zilla Parishad. This contention of the intervenors is not tenable in law. The record already discussed shows that the petitioners were transferred long back to Zilla Parishads' establishments, they were appointed by Zilla Parishads and then they were amalgamated in the cadre of

Health Assistant (Ladies). The petitioners were not sent on deputation and their services in Zilla Parishads right from day one are counted in the seniority list prepared for the cadre of Health Assistant (Ladies). It cannot be said that the intervenors who joined the service subsequently were not knowing that the petitioners were already in service, they were better qualified at the time of amalgamation, they were shown senior to LHVs. Thus, on factual aspect, continuous service and on merits also, the intervenors, the employees who were in the past LHVs have no right to oppose the claim of the petitioners.

20) On the aforesaid point, the learned counsel for petitioners placed reliance on some reported cases. In the case reported as **(2014) 13 SCC 219 [Viman Vaman Awale Vs. Gangadhar Makhriya Charitable Trust and Ors.]**, the Apex Court has laid down that for promotion, seniority needs to be determined on continuous officiation with required qualification. There cannot be dispute over this proposition. The petitioners are placed on better footing than the petitioner of the petition decided by the Apex Court.

21) In the case reported as **AIR 1973 SC 1146 [State of Mysore Vs. Krishna Murthy and Ors.]**, the Apex Court has made

following observations :-

"Inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria correlated to the object for which the difference is made. In the case of Government servants, the object of such a difference must be presumed to be a selection of the most competent from amongst those possessing qualifications and backgrounds entitling them to be considered as members of one class. In some cases, quotas may have to be fixed between what are different classes or sources for promotion on grounds of public policy. If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable. On the contrary, if the facts of a particular case disclose no such rational distinction between members of what is found to be really a single class no class distinctions can be made in selecting the best. Articles 14 and 16 (1) of the Constitution must be held to be violated when members of one class are not even considered for promotion. In the latter type of cases where the difference in promotional opportunities of those who were wrongly divided into two classes for this purpose only could not be justified on any rational grounds."

Further, the Apex Court has laid down that the power to make rules

under Article 309 of Constitution of India cannot be used to validate unconstitutional discrimination in promotional chances of Government servants who belong to same category. These propositions cannot be disputed and they need to be used in the preset matter.

22) In the case reported as **(2013) 7 SCC 335 (S. Sivaguru Vs. State of Tamil Nadu and Ors.)**, the Apex Court has laid down that after the merger, posts in integrated cadre become equal for all practical purpose and birth mark of original cadres obliterated. It is held that the classification of posts on birthmark after merger would be wholly unjustified and discriminatory. There cannot be dispute over this proposition and it can be said that the petitioners in the present matters are better placed.

23) In the present matter, this Court has no hesitation to hold that excluding the petitioners in the GR of 2012, to deny them the opportunity to get the promotion to the post of Health Supervisor is in violation of rights given to the petitioners and similarly placed employees under Articles 14 and 16 of Constitution of India. There is no reasonable justification, rational behind this classification. So, to that extent, the GR needs to be quashed and

set aside and direction also needs to be given to see that the petitioners who had joined service as NMs are included in the GR and they are given promotions on the basis of gradation list of Health Assistant (Ladies) already prepared by Zilla Parishads. In the result, following order is made.

ORDER

(I) All the writ petitions are allowed. Civil Application is disposed of.

(II) The reliefs in terms of prayer clause 'B', 'C' and 'D' of Writ Petition No. 6656/2013 is given in all the petitions.

Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/