

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

WRIT PETITION NO. 9773 OF 2015

Maharashtra Zilla Parishad
Registered Veterinary Graduate
Association, Aurangabad,
Through its Vice-President,
Dr.Vijaykumar Anandrao Mokhade,
Age 43 years, Occ.Service,
R/o Beed Bye Pass, Aurangabad,
Tal. & Dist Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
Animal Husbandry and
Dairy Development Department,
Mantralaya, Mumbai.

2. The Commissioner of Animal
Husbandry, Maharashtra State,
Pune.

...Respondents

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Shri. S. S. Thombre, Advocate for the petitioner
Shri. Ashutosh Kumbhakoni, Advocate General with Shri. A. B. Girase, GP
for respondents No. 1 and 2
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE OF RESERVING THE JUDGMENT : 27.04.2018
DATE OF PRONOUNCING THE JUDGMENT : 06.06.2018

JUDGMENT (PER A. M. DHAVALA, J.):

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission.

2. The petitioner is an association of unregistered veterinary graduates, who are serving as Livestock Supervisors. By this writ petition, they are claiming that the Government Resolution dt. 11.07.2013 for constitution of separate cadre of Live Stock Development Officer [Group-B] is illegal and contrary to Indian Veterinary Council Act, 1984. It also claims appropriate writ for direction to the respondents to fill up the post of Livestock Development Officer by promotion from the eligible degree-holder candidates and working in the department on the post of Livestock Supervisors.

3. Since there is a challenge to the provisions of law, learned Advocate General has been served.

4. Shri. S. S. Thombre, learned counsel for the petitioners argued that, as per the Indian Veterinary Council Act, 1984, only degree-holders registered under the Act are entitled to carry out operations, whereas; the Diploma holders are entitled to carry out only minor veterinary services or minor operations under the supervision of Degree-holder. The posts of Livestock Supervisor are filled in Zilla Parishad governed under the Rural Development Department as well as in Livestock Development Board. The eligibility qualification for the said post is Diploma in Veterinary Science but the degree-holders also can apply and are posted as Livestock Supervisors. They can carry out only minor veterinary services. The promotional posts for them was Livestock Development Officer. The said posts were to be filled in by way of 85% nomination and 15% promotion from in-service employees. Among the in-service employees, there was 50% quota for Livestock

Supervisors appointed in Zilla Parishad and 50% are appointed in the Commissionerate of Animal Husbandry under the control of Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, State of Maharashtra. He submitted that, Livestock Development Officer is a superior post wherein the nature of duties are such that those can be performed by only registered degree holders in veterinary science. The degree-holders from the Department were entitled for 50% seats from the said cadre, but in *Udaysingh Dagar vs. Union of India*, it was held that the Diploma holders cannot be permitted to work as Livestock Development Officer and they cannot perform the work which only degree-holders registered under the Indian Veterinary Science Act were entitled to do. Thereafter, the State Government has created a new post of Livestock Development Officer (Group – B), which is inferior in pay-scale to Livestock Development Officer, earlier existed and now renamed as Livestock Development Officer (Group-A) post. There is not only difference in pay scale but also in nature of duties. The Live Stock Development Officer (Group-B) can perform only minor services and carry out some minor operations under the supervision of degree-holders holding Group-A post. The degree-holders from the promotional cadre were entitled to get the post of Livestock Development Officer (Group-A) but by the new changes, they have been prevented from getting the promotion of Livestock Development Officer (Group-A), which is in contravention of Section 5 of Livestock Development Officer, in Maharashtra Animal Husbandry Services, Class II, in the Animal Husbandry Department (Recruitment) Rules, 1988. He also claimed that, the in-service candidates were entitled for 50% promotional posts. He argued that, it is artificial classification and unjust interpretation to the employees, who in spite of holding degree, joined as Livestock Supervisor. He also challenged

the creation of post of Livestock Development Officer (Group B) on the ground that the diploma holders cannot hold the post of Livestock Development Officer as it is contrary to Indian Veterinary Council Act, 1984.

5. Per contra, Shri. Ashutosh Kumbhakoni, learned Advocate General has made threefold submissions as follows :

(i) The petitioners herein have no *locus standi*. The post of Livestock Development Officer is promotional post for Assistant Livestock Development Officer. The petitioners are Livestock Supervisors. Presently, they have no right to be considered for promotion to the post of Livestock Development Officer. The persons who are holding degree and working as Assistant Livestock Development Officers are not made parties and, therefore, this petition is not tenable.

(ii) The 50-50% ratio is available for employees from Zilla Parishad and those from State Government for the promotional quota of 15% for Livestock Development Officer. The same has been maintained. The same is not for direct appointment and promotions.

(iii) Since the members of petitioner were diploma holders holding the post of Livestock Supervisor and they were getting promotion, but as per rules, they were not entitled for performing duties which only the registered degree-holders in veterinary science can do. The post of Livestock Development Officer (Group B) was introduced as a promotional post. The duties of the said post are fixed in tune with the minor services which a Diploma-holder can perform as per Indian Veterinary Council Act. Mr Kumbhakoni

submits that, the persons holding degree were permitted to appear for the examination of Livestock Development Officer [Group-A] and there was no injustice to them. When the persons have accepted the inferior job and if he cannot be considered for superior job as per service conditions, it does not affect his or her constitutional rights. He argued that, the rules for appointment to the post of Livestock Development Officer [Group-A] are yet to be framed and therefore the present petition is premature as well. He denied that the Recruitment Rules were anyway violated. He submits that, the petition is not clear about the nature of reliefs and about the rights claimed.

6. We have considered the arguments advanced by learned counsel for the respective parties and gone through the papers with the assistance of the counsels.

7. It is not disputed that the hierarchy was as follows :

Live Stock Supervisor

State	Z. P.
Asst. LSDO	Asst. LSDO
LSDO Group B (15%)	LSDO Group B (85%)

8. It is not in dispute that the Livestock Supervisor cannot be directly promoted to the post of Livestock Development Officer-Group B or Group A. They have to be promoted to the post of Asst. Livestock Development Officer or if they are holding degree in Veterinary Science, they can appear for the examination of Livestock Development Officer as Group A, but they have no right of promotion. Only the degree holders in Veterinary Science working

on the post of Asst. Live Stock Development Officer both in State as well as Zilla Parishad can raise grievance, if any, for claiming right for promotional post of Livestock Development Officer.

9. In the light of these facts, the rights of degree-holders working as Assistant Livestock Development Officer are in dispute and those cannot be decided in their absence. The petitioners if promoted to the post of Asst. Livestock Development Officer can only agitate about their rights for further promotion. We therefore find that, this petition can be disposed of as not maintainable on the grounds that the petitioners have no right to claim promotion and the degree holders holding the post of Livestock Development Officer are not made parties to the petition.

10. However, since the arguments were advanced, we wish to record certain facts which were not disputed. The post of Livestock Development Officer was to be filled in by way of 85% by nomination and 15% by promotion. Rule 5 of of Livestock Development Officer, in Maharashtra Animal Husbandry Services, Class II, in the Animal Husbandry Department (Recruitment) Rules, 1988 prescribes avenue of promotion to the post of Livestock Development Officer to the extent of 15%.

11. It is not disputed that, there is difference in the eligibility criteria, nature of course contents and the qualification of degree and that of diploma in Veterinary Science. The Indian Veterinary Council Act provides for the activities in the veterinary science which the degree-holders can perform. The major operations are to be performed by only degree holders. Minor operations are to be performed by diploma holders under the supervision of degree

holder. The degree holder has to obtain registration under the Indian Veterinary Council Act.

12. In *Uday Singh Dagar & Ors. Versus Union of India & Ors.* reported in 2007(0) BCI 287, the issue of nature of duties which a non-degree holder in veterinary science can perform was in question. The non-graduates were claiming continuation of some rights which they were enjoying before the enactment of Indian Veterinary Councils Act, 1984. The vires of Section 30 of Indian Veterinary Councils Act, 1984 was challenged which provides that, no person, other than a registered veterinary practitioner, shall hold office as veterinary physician or surgeon or any other like office (by whatever name called) in Government or in any institution maintained by a local or other authority and practice veterinary medicine in any State. It also provides that the State Government may, by order, permit a person holding a diploma or certificate of veterinary supervisor, stockman or stock assistant (by whatever name called) issued by the Directorate of Animal Husbandry (by whatever name called) of any State or any veterinary institution in India, to render, under the supervision and direction of a registered veterinary practitioner, minor veterinary services. The Apex Court held that, the right of the petitioners to practise in the field of veterinary practice has expressly been taken away.

13. In *Shri Shivram Krishna Wanmore vs The State of Maharashtra and others* (WP No. 5567/2010) decided by the Division bench at the Principal Seat of this Court on 13.06.2013, the diploma holders in animal husbandry and veterinary science claimed right to practice as veterinary practitioner. Relying on the judgment in *Udaysingh Dagar* (supra), the writ petition was dismissed holding

that they had no right to practice though they can render minor veterinary services.

14. Previously there was only post of Livestock Development Officer with no bifurcation of Group A and Group B. After bifurcation, the duties and pay scale of Livestock Development Officer was changed to that of Group-A employee; whereas; Group B was separately carved out with lower pay scale and inferior nature of duties which a diploma holder can perform. Nevertheless, Rule 5 of Livestock Development Officer, in Maharashtra Animal Husbandry Services, Class II, in the Animal Husbandry Department (Recruitment) Rules, 1988, was and is still in force. It specifically provides appointment to the post 15% by promotion and 85% by nomination. This rule has not been changed. It seems that, the Government wanted to continue the promotional avenue to the in service employees to the extent of 15%. The employees were belonging to both the groups i.e. Diploma-holders as well as Degree-holders. The degree holders were capable of performing the duties of Livestock Development Officer, which was later on renamed as Group 'A', but the diploma holders were not legally entitled to do the same. Therefore, the State Government created bifurcation of Group A and Group B in the post of Livestock Development Officer. The pay scale and the nature of work which were assigned to Livestock Development Officer as existing before was assigned to Livestock Development Officer [Group-A], whereas; lower pay scale and inferior nature of work in the form of minor veterinary services was assigned to the post of Livestock Development Officer [Group-B].

15. We find that, Livestock Development Officer [Group-A] is a promotional post for in service Asst. Livestock Development Officer

both from State as well as Zilla Parishad. Asst. Livestock Development Officers holding degree were capable of performing the duties of Livestock Development Officer [Group-A] and were entitled to get the same pay by joining the post of Livestock Development Supervisor. They had not forfeited their right for promotion to the post of Livestock Development Officer [Group-A]. If the Government wanted to create promotional avenues for diploma holders from Livestock Supervisor and Asstt. Livestock Development Officer, the Government is entitled to do so, but while doing so, the right of degree holders from Asst. Livestock Development Officer to claim right for consideration by way of promotion to the post of Livestock Development Officer [Group-A] cannot be taken away.

16. Rule 5 as long as it is not amended maintains the right of degree holders to be considered for promotion from Asst. Livestock Development Officer cadre to Livestock Development Officer of 15% posts. Livestock Development Officer [Group B] being inferior post to Livestock Development Officer (Group A) both in pay-scale and nature of duties making provision of 15% posts from Group A to Group B is not the compliance of Rule 5. The Government may reconsider the allocation of Livestock Development Officer (Group A & B) as per their avenues and may provide additional promotional avenues of Group B post for diploma holders but out of the total posts of LSDO - Group A, as per Rule 5, 15% must be filled in by promotion from the feeding cadre.

17. The Id. Advocate General has submitted that the framing of rules of promotional post of Group A is in process. Since we have held that this writ petition is not maintainable, it is liable to be dismissed as such. We hope and trust that the State Government

shall consider the legal position referred above and shall see that the rules shall be so framed that there will be no scope for challenge to the validity thereof.

18. With these observations, the writ petition is dismissed as not maintainable. Rule is discharged. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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