

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

WRIT PETITION NO. 8415 OF 2013

1. Smt. Kalpana w/o. Shrish Deshmukh,
Age 54 years, Occu. Service,
R/o. A3, Sahas Society, Garkheda
Parisar, Aurangabad.
2. Balasaheb s/o. Gangadhar Ingale,
Age 39 years, Occu. Service,
R/o. Plot No. 130, Gut No. 95,
Peshve Nagar, Near Renuka High
School, Satara Parisar, Aurangabad.
3. Shri. Dadarao s/o. Suryabhan Barote,
Age 50 years, Occu. Service,
R/o. P 9/0/1, Gulmohar Colony,
Cidco N5, Aurangabad.
4. Smt. Sandhya w/o. Nana Chavan,
Age 41 years, Occu. Service,
R/o. Plot No. 25, New Hanuman
Nagar, Garkheda Parisar, Aurangabad.
5. Shri. Prashant s/o. Bapurao Nakade,
Age 38 years, Occu. Service,
R/o. Plot No. 50, Gut No. 145, Near
Renuka Water Supplier, Alok Nagar,
Beed by pass, Aurangabad.

....Petitioners.

Versus

1. The State of Maharashtra
Through its Secretary,
Law and Judiciary,
Mantralaya, Mumbai.
2. The Registrar General,
The High Court of Judicature of
Bombay, Bombay.
3. The Registrar (Adm),
High Court of Judicature of Bombay,
Bench at Aurangabad.

4. The Registrar (Judicial),
High Court of Judicature of Bombay,
Bench at Aurangabad.
5. Shri. Devendra s/o. Madhukarrao Beedkar,
Age 39 years, Occu. Service,
R/o. Bills Section, High Court of Judicature
of Bombay, Bench at Aurangabad.
6. Smt. Kirti w/o. Manish Kapoor,
Age 35 years, Occu. Service,
R/o. Certified Copy Branch,
High Court of Judicature of Bombay,
Bench at Aurangabad.

....Respondents.

Miss. Pradnya S. Talekar h/f. Mr. S.B. Talekar, Advocate for petitioners.

Mr. R.V. Dasalkar, AGP for respondent No. 1/State.

Mr. R.S. Deshmukh, Advocate for respondent Nos. 2 to 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : APRIL 04, 2018.**

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

1) The petition is filed under Articles 226, 14 and 16 of the Constitution of India for setting aside the order of promotion made by respondent High Court in favour of respondent Nos. 5 and 6 and for giving direction to respondent High Court to give promotion to the petitioners on the posts of Assistants with effect from 23.5.2013 and for other consequential reliefs. Both the sides are heard.

2) The petitioners were working as Clerks on the establishment of this Court at Aurangabad Seat. In April 2013,

process for giving promotion to the Clerks to the post of Assistant was started and there were 23 such posts available. The petitioners participated in the said process, but they did not get the promotion. The petitioners were superseded and the persons who were below them in seniority got the promotions.

3) It is the case of petitioners that in the past the criteria was 'merit-cum-seniority', but in the year 2008, the criteria was changed to make it as 'seniority-cum-suitability' and this principle ought to have been followed in the promotion process. It is the contention of the petitioners that the principle was not followed in letter and spirit. One more ground was argued that the Annual Confidential Reports (hereinafter referred to as 'ACRs' for short) were not communicated to them of the relevant period and due to that also, they could not reach the bench mark. It is also contended that as per the new principle for promotion, the High Court ought not to have fixed the bench mark and only on the basis of seniority, promotions ought to have been given.

4) The other side has contested the matter. The papers of promotion process were made available to this Court for perusal. Under Right to Information Act these papers were supplied to petitioners also.

5) It is not disputed that the principle 'seniority-cum-suitability' was to be used for giving promotion to the post of Assistant. The submissions for petitioners that there could not have been bench mark is not acceptable. The learned counsel for petitioners submitted that the term 'suitability' indirectly would mean 'merit' if bench mark is fixed and so, the bench mark ought not to have been fixed. This proposition is not acceptable. The term 'suitability' means suitability for particular post on which promotion is to be given. For that the employer can fix the bench mark. In the present matter, the employees who had participated in the process were to achieve the bench mark which was 25 marks out of 50 marks. Out of 50 marks, 20 marks were kept for oral interview, 25 marks were kept for ACRs of last five years and 5 marks were kept for Special Report. On the basis of gradation, marks were given for ACRs of relevant period. All the employees who had participated in the process got equal marks viz. 5 marks for Special Report. It is not disputed that present petitioners could not achieve the marks fixed as bench mark in oral interview and ACRs. The totalling of all the marks was to be done and this total ought to have been 25 or more than 25. In view of that procedure adopted, which was transparent, it cannot be said that the petitioners suffered adversely due to aforesaid procedure. To no candidate who had participated in the

process ACRs were communicated in the past.

6) On the point of entitlement of employees to get information with regard to ACRs, the learned counsel for petitioners has cited many reported cases. It is not disputed that since the year 2013 the process of communicating ACRs came to be started by the respondent High Court. The learned counsel took this Court through the ACRs as they are now available with the petitioners also. There is force in the submission that immediate superior officers of the employees had probably no training about the writing of ACRs and due to that after assessing the performance and the capacity on the basis of points mentioned in ACRs, the gradation was not properly given. However, the matter does not end there and after such officers, there are atleast two more officers who are expected to verify and confirm the ACRs. In some cases, the gradation given by the immediate superior officer is not accepted by the verifying authority and the gradation is reduced. This Court has gone through these ACRs carefully and this Court has no hesitation to observe that proper procedure was followed for verification and confirmation of the grade given by the immediate superior officers to the employees. The immediate superior officers for five years were different and for the different employees they were from different departments. It can be said that the immediate superior officers

could have given particulars with regard to the work done or the work kept in arrears when the point of 'industry and sincerity' was considered and the material on other point could have been specifically mentioned for giving a particular grade. This Court hopes that in future, the immediate superior officers who are expected to write ACRs are given necessary training in that regard. However, the process was uniform and nothing is pointed out to this Court on the basis of those ACRs that there was vindictiveness or other thing due to which the gradation was not proper.

7) The submissions made and the record show that the candidate at Sr. No. 1 in seniority list, Smt. Mahajan was also superseded, but she preferred not to challenge the process. Petitioner No. 1 was at Sr. No. 2 in seniority list and she secured 20 marks. Other petitioners like petitioner Nos. 2 to 5 were at Sr. Nos. 24 to 27 and they also secured marks between 21 and 24. Thus, they could not reach the bench mark. The ACRs of these employees show that at no time there was grading of 'average'. Petitioner No. 2 Shri. Ingale had 'A' grading for one year, petitioner No. 3 Shri. Barote had one grading of 'very good' and two gradings of 'positively good'. Thus, it cannot be said that there was no fairness in the process or for some reason proper gradation was not given intentionally. Further, all these petitioners got promotion in the next

year i.e. in the year 2014. So, there is question of only one year. It is true that many times losing seniority by one year also affects the entire career, but there are no circumstances in the present matter due to which interference is warranted.

8) The learned counsel for petitioners placed reliance on some reported cases like **(2017) 5 SCC 783 [Palure Bhaskar Rao and Ors. Vs. P. Ramaseshaiah and Ors.]**. In this case the meaning of terms 'seniority-cum-merit' and 'merit-cum-seniority' is given and the difference between two is also given. There cannot be dispute over the proposition. In other case reported as **(1997) 7 SCC 209 [Ajit Singh and Ors. Vs. State of Punjab and Ors.]**, there are some observations with regard to seniority-cum-suitability. These observations do not show that there cannot be bench mark when the criteria is 'seniority-cum-suitability'. On the same point, some more cases are cited as under :-

(i) (2012) 2 SCC 321 [N.C. Das Vs. Gauhati High Court through Registrar and Ors.],

(ii) (1984) 1 SLR 359 Bom. [Nathu Dharamji Palode and Anr. Vs. Commissioner of Nagpur and Ors.] (Writ Petition No. 619/1982, dated 6th July 1983).

(iii) (2013) 9 SCC 566 [Sukhdev Singh Vs. Union of India and Ors.]

(iv) (1973) 4 SCC 135 [Mir Ghulam Hussan and Ors. Vs. The Union of India and Ors.],

(v) (2008) 8 SCC 725 [Dev Dutt Vs. Union of India and Ors.], and

(vi) 2014 (2) SCALE 262 [Renu & Ors. Vs. District & Sessions Judge, Tis Hazari and Anr.] (Civil Appeal No. 979/2014 dated 12.2.2014).

There cannot be dispute over the ratios laid down by the Apex Court in the aforesaid cases. The facts and circumstances of each and every case are always different. In one case, the Apex Court had directed to consider the representation in respect of ACRs and then review the process of promotion as there was no communication of ACRs. It appears that the record of ACRs was available though subsequently. The submissions do not show that they had made representation against those ACRs. Further, in no case there was gradation like 'average' or 'below average'. If the marks given on the basis of ACRs to other candidates are compared, it cannot be said that they went ahead of the petitioners on the basis of marks given for ACRs. For all these reasons, this Court holds that it is not possible to interfere in the promotion process conducted by the respondent High Court. In the result, the petition stands dismissed. Rule stands discharged.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]