

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5583 OF 2016

Dattatraya Digamber Jadhav	...Petitioner
Versus	
State of Maharashtra & Ors.	...Respondents

Ms Lalita H. Panchakshari for Petitioner.
Mr. N. C. Walimbe – AGP for Respondents – State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 12th MARCH 2018

ORAL JUDGMENT :

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 23rd June 2015 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 961 of 2011. The petitioner, by filing OA 961 of 2011 had

applied for relief of higher pay scale i.e. pay scale of Rs.3050-4590 (corresponding to previous pay scale of Rs.950-1400) with effect from 1st January 1996 and Time Bound Promotional with effect from 20th July 2002.

4] The learned counsel for the petitioner contends that the petitioner was appointed as Laboratory Cleaner on 17th July 1990. She submits that by a previous order dated 19th September 1985 the post of Senior Laboratory Attendant and Laboratory Cleaner had been merged creating a common cadre of Laboratory Attendants. She submits that as per the recruitment rules for the post of Laboratory Attendant the qualification prescribed is 4th class pass and the scale prescribed is Rs.750-940. She submits that the scale of Laboratory Attendants was revised to Rs.950-1400 with effect from 1st January 1986 as per GR dated 11th February 2000. She submits that the petitioner has passed 6th Class and also appeared externally for 10th class (SSC) though, the petitioner could not pass the SSC examination. She submits that on this ground, the petitioner has been illegally denied revised scale of Rs.950-1400.

5] The learned counsel for the petitioner submits that at the time of petitioner's initial recruitment, there was no requirement of education upto Matric (SSC) and therefore, the GR dated 11th February 2000, which introduces such requirement, could not have been made applicable to the case of the petitioner. She submits that the MAT has misconstrued the provisions of the GR dated 11th February 2000 and therefore, has denied relief as prayed for. The learned counsel for the petitioner submits that the impugned judgment and order warrants interference and the petitioner is liable to be granted the benefit prayed for in the OA.

6] Mr. Walimbe, the learned AGP submits that in terms of a GR dated 11th February 2000, in order that a Laboratory Attendant is awarded the higher pay scale of Rs.950-1400, such Laboratory Attendant has to fulfill the criteria prescribed. In this case, the petitioner did not fulfill any of the eligibility conditions necessary for award of higher pay scale and therefore the respondents rejected the petitioner's request for award of higher pay scale. He submits that the MAT, upon examination of the facts as well

as GR dated 11th February 2000 has rightly dismissed the OA. He therefore submits that the impugned judgment and order warrants no interference.

7] The GR dated 11th February 2000 which awards the higher pay scale of Rs.950-1400 prescribes three conditions for award of such higher scale. The same are as follows:

- (i) Those who were in service on 31.12.1985, or
- (ii) Those who completed 30 years of age on 29.1.1990, or
- (iii) Those who had been educated upon matric with Physics & Chemistry.

8] There is no factual dispute that the petitioner does not comply with any of the aforesaid pre-conditions. The petitioner was not in service on 31st December 1985. The petitioner had not completed 30 years of age on 29th January 1990. The petitioner has not been educated upto matric with physics and chemistry. The petitioner admits that he has been educated only upto 6th Std. The petitioner no doubt submits that he did attempt to appear for SSC

examination, as an external student but was not successful in obtaining the qualification of SSC. In these circumstances, there is no infirmity in the petitioner not being awarded higher pay scale.

9] The petitioner has made reference to certain other persons who were awarded higher pay scale even though, they may not have obtained the SSC qualification. The MAT has noted that the information supplied by the petitioner in this regards is far from accurate. In any case, there is no basis to hold that such persons did not fulfill any of the conditions specified in GR dated 11th February 2000.

10] In any case, if, some persons, as contended by the petitioner, have been awarded the higher pay scale despite the fact that they do not fulfill the eligibility requirements prescribed in GR dated 11th February 2000, on such basis, the petitioner cannot insist upon being awarded the higher pay scale. It is settled law that there can be no equalities of illegalities. The right conferred by Article 14 is a positive right and not a negative right. Two wrongs do not make a right. (**See: General Manager, Uttaranchal Jal**

Sansthan vs. Laxmi Devi & Ors.¹, State of Uttaranchal vs. Alok Sharma & Ors.², Punjab State Electricity Board & Ors. vs. Gurmail Singh³ and Union of India & Anr. vs. A. K. Narula⁴).

11] For the aforesaid reasons, we see no merit in this petition, which is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA

1 (2009) 7 SCC 205

2 (2009) 7 SCC 647

3 (2008) 7 SCC 245

4 (2007) 11 SCC 10