

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO.8300 OF 2012**

1. Satish s/o Vithalrao Deshmukh  
Age: 44 years, Occ: Services  
working as Senior Clerk in the  
Court of Hon'ble C.J.J.D. Sonpeth  
Dist. Parbhani.
2. Vikas Nagorao Gaikwad  
Age: 45 years, Occ: Services  
working as Junior Clerk in the  
Court of Hon'ble C.J.J.D.  
Dist. Parbhani.
3. Sanjay s/o Anandrao Ukkalkar  
Age: 35 years, Occ: Services  
working as Steno Typist A.G.P. Office,  
Vasmat, Dist. Hingoli.
4. Baliram s/o Bhagwanrao Kadam  
Age: 30 years, Occ: Services  
working as Steno Typist  
D.G.P. Office, Parbhani.
5. Mohd. Jahiruddin s/o Mohd. Karimuddin  
Age: 30 years, Occ: Services  
working as Junior Clerk in the  
Court of Hon'ble J.M.F.C. Parbhani  
Dist. Parbhani. ..PETITIONERS

VERSUS

1. The State of Maharashtra,  
Through Secretary,  
Law and Judiciary Deptt.  
Maharashtra State, Mantralaya,  
Mumbai.
2. The Registrar General  
High Court Bombay,  
Fort, Mumbai – 32.
3. The Principal District and Sessions Judge,  
Parbhani, Dist. Parbhani. ..RESPONDENTS

Mr. V. D. Salunke, Advocate for the Petitioners.  
Mr. K. B. Jadhavar, AGP for Respondent No.1.  
Mr. Rajendra S. Deshmukh, Advocate for Respondent Nos.2 and 3.

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**CORAM : S. V. GANGAPURWALA &  
ANIL S. KILOR, JJ.**

**Closed for Orders on : 16.10.2019.**

**Order Pronounced on : 20.12.2019.**

**FINAL ORDER (Per S. V. Gangapurwala, J.) :-**

1. The petitioner no.1 was working as Senior Clerk. The petitioner nos.2 and 5 were working as Junior Clerks. The petitioner nos.3 and 4 were working as Steno-Typist. The Principal District and Sessions Judge, Parbhani under order dated 03.03.2011 promoted petitioner nos.1, 3 and 4 as Stenographer (L.G.) and petitioner nos.2 and 5 as Steno-Typist on temporary and ad-hoc basis. Under the impugned communication dated 11.09.2012, these petitioners are reverted to their original posts. The petitioners have assailed the said order.

2. Mr. Salunke, learned counsel for petitioners strenuously contends that due procedure was followed before promoting petitioners on the promotional posts. The written examination was held, oral interviews were conducted and thereafter promotion orders were issued to petitioners. The petitioners worked on the promotional posts for one and half years. Without notice to petitioners, petitioners are reverted abruptly on the basis of telephonic message received from the High Court, Bombay and confidential letter of the Bombay High

Court dated 16.07.2012. The learned counsel submits that principles of natural justice are flouted while reverting petitioners. The learned counsel relies on the Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The learned counsel submits that though promotion order states that it is temporary and ad-hoc for a period of four months, the petitioners were continued for one and half year and without any reasons are reverted. According to the learned counsel, objection of Smt. B. B. Magare through representation before the High Court was only with regard to the selection of one candidate. It is improper to say that the whole selection process was reopened. The directions of this Court in Writ Petition No.3206/2012 was only to the extent that the Appellate Authority would decide the representation dated 16.05.2011 of petitioner therein. The said letter was not challenging the entire selection process, but was limited to the selection of one candidate who was a brother engaged for evaluating answer sheets.

3. The learned counsel submits that while reverting petitioners, no reasons are given. The respondents cannot substitute the reasons by affidavit. The learned counsel relies on the judgment of the Apex Court in a case of **Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi** reported in 1978 AIR (SC) 851. The learned counsel submits that even probationary or a person appointed temporarily is entitled to the protection

of Article 311(2) of the Constitution of India. The learned counsel relies on the judgment of the Apex Court in the case of **Madan Gopal vs. State of Punjab** reported in 1963 AIR (SC) 531, in a case of **State of Bihar vs. Gopi Kishore Prasad** reported in 1960 AIR (SC) 689, so also in a case of **State of Punjab vs. Prakash Singh Cheema** reported in 1975 (4) SCC 84. The learned counsel submits that petitioners are entitled to give opportunity before canceling their promotions. If opportunity is not given before reverting petitioners, the order of reversion is vitiated. The learned counsel relies on the judgment of the Division Bench of this Court in case of **Namdeo Sopan Arsale vs. State of Maharashtra and Others** reported in 2016 (3) Mh.L.J. 327.

4. Mr. Deshmukh, learned counsel for respondents submits that petitioners were promoted temporarily and on ad-hoc basis. After the process of selection was over petitioners were given appointment on promotional posts. One of the candidate namely Smt. B. B. Magare preferred representation challenging the selection process. She also filed Writ Petition bearing No.3206/2012. This Court directed to decide the representation within three months. Considering the representation given, it was decided to reopen the selection process. In view of that, seven candidates including petitioners, who were promoted, were reverted to their original posts and simultaneously fresh selection process was undertaken. The

learned counsel submits that the entire record of recruitment / selection process was called to Bombay and was verified. The original answer sheets were called for from the District Judge, Parbhani and the same were reassessed. The original question papers were called for from the District Court, Parbhani, however, in-charge Principal District Judge informed that when the sealed envelop in which original question papers and answer sheets were kept, was opened in the presence of member of the Advisory Committee, that time question papers of English Shorthand of 100 words per minute was not found and therefore answer sheets of English Shorthand of 100 words per minute could not be reassessed. The report of the reassessment alongwith photocopies of the answer sheets English and Marathi Shorthand and Typing papers (except English Shorthand 100 words per minute) was submitted. The reassessment revealed that in spite of having committed more mistakes, the petitioners were selected and promoted, whereas, representationist though had committed less mistakes was not selected and promoted. In view of that, it was clear that the selection process was not conducted in fair manner and in this view of the matter it was directed to reopen the selection process.

5. Mr. Deshmukh, learned counsel further submits that petitioners are beneficiaries of faulty and unfair selection process in which they were given ad-hoc promotions, cannot claim to have

any legal right to continue on the said promotional posts and petitioners cannot claim equity on the basis of faulty selection process. The orders of reversion impugned in the present writ petition are necessary fall out of cancellation of earlier selection process, which was found to be not conducted in fair manner and serious lacunae / irregularities were found in the same. Since earlier selection process in which the petitioners were selected was canceled and directed to be reopened, a necessary consequence of the same was to cancel the orders of temporary promotions given to petitioners and to revert them back to their original posts so as to enable the answering respondents to reopen the selection process.

6. The learned counsel further submits that petitioners cannot claim violation of principles of natural justice, since the orders are neither punitive nor cast any stigma on the career of the petitioners and the orders were passed after selection process was found faulty. The length of service rendered by the petitioners on the ad-hoc promotional posts cannot be of any aid to them so as to claim equity, as the process in which they were selected was unfair, irregular and was vitiated. The learned counsel relies on the judgment of the Apex Court in a case of **Union Territory of Chandigarh vs. Dilbagh Singh and Others** reported in **AIR 1993 Supreme Court 796**, so also on the judgment in the case of **State of Bihar vs. Upendra Narayan Singh & Ors.** reported in 2009 (5)

SCC 65 and in the case of **Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Ltd. And Ors. vs. Surendra Nath Pandey and Ors.** reported in **AIR 2011 SC (Supp) 693**. The learned counsel submits that this Court in writ jurisdiction under Article 226 of Constitution of India would not act as an appellate authority.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The petitioners herein were working as either Steno-Typist, Junior Clerk, Senior Clerk at respective Courts.

9. In view of the Government Resolution dated 06.06.2006, the post of Stenographers (L.G.) were newly created.

10. The Principal District and Sessions Judge, Parbhani under his letter dated 21.01.2019 issued letters to the Civil Judge at Hingoli, Basmath, Gangakhed and Parbhani intimating them that the post of Stenographer (L.G.) Marathi and English have to be filled in by promotions and for that purpose applications be invited from the employees. The terms and conditions were also detailed. The minimum speed required was provided for in the terms and conditions. The qualification and eligibility was also detailed. It was further clarified in the said letters that the posts are to be temporary filled in and if the Courts are reduced, then the persons promoted as Stenographer

(L.G.) would be reverted. Pursuant thereto, the written test was held on 26.02.2011. After the written test was held, the marks were allotted. Thereafter, petitioners were issued with the promotion orders on 03.03.2011. The petitioners joined the promotional posts as per the posting orders. The conditions provided under the order promoting and posting petitioners on the promotional posts are as under:

Note:

“1. Promotion of employees on the post of Stenographer (L.G.) and Steno-Typist is purely on temporary and on ad-hoc basis for the period of four months only.

2. Newly promoted employees on the post of Steno-Typist are required to appear for the test of English Shorthand @ 80 w.p.m and Marathi Shorthand @ 60 w.p.m., English typing test @ 40 w.p.m. and Marathi typing test @ 30 w.p.m. which is to be held in the month of July/August 2011. In the event of unsatisfactory performance in these tests, promoted employees will be liable to revert on their original post.

4. One post of Senior Clerk in the Additional District Court, Basmath, one post of Junior Clerk in the Court of Civil Judge (S.D.) Parbhani and Hingoli, one post of Junior Clerk in the District Court, Parbhani and one post of Junior Clerk in the Court of Civil Judge (J.D.) Purna are kept vacant.

5. Attention of the employees who are promoted to the Higher post is invited to exercise their option, order issued under Government Resolution Finance Department No.Pay/1082/CR-1100 (I) SER dated 06.11.1984.

6. Transfer of employee shown at Sr. No.4 is made on his own request. Hence, he is not

entitled to claim joining time, T.A./D.A. on his transfer."

11. The petitioners have joined the promotional posts at the places they were given posting. Under the impugned office order, petitioners are reverted. The order of reversion refers to the High Court Bombay confidential letter dated 16.07.2012 and telephonic message received on 13.09.2012 from the High Court Bombay. The order of reversion is issued by the Principal District and Sessions Judge, Parbhani. Save and accept, the reference given in the Office Order of the aforesaid letters, no reason is mentioned for reversion of the petitioners. The petitioners had approximately worked for one and half year on the promotional posts. It is submitted that as per Clause 2 of the promotion order, the test for English Shorthand and Typing, so also Marathi Shorthand and Typing was not held. It was only if the petitioners failed in the test that was to be conducted in the July/August 2011. then they were liable to be reverted. No such test was held. The order of reversion does not give any other reason. In the affidavit-in-reply filed on record, it is contended by the respondents that, on the basis of complaint of one of the candidate Smt. B. B. Magare. the selection process was reopened and reassessment of answer sheets was conducted and it was observed that marks were not properly allotted. On affidavit it has been said by respondents that, they could not get the question paper of English

Shorthand. In absence of the same, it may not be possible to reassess the answer sheets of English Shorthand and the said answer sheets were not reassessed. In absence of reassessment of the said answer sheets of English Shorthand 100 words per minute, we fail to understand how the respondents would come to the conclusion that the marks were not given commensurate with the mistakes committed. It is submitted in the rejoinder filed by the petitioners that even oral interviews were conducted before promoting the petitioners. In the additional affidavit filed by respondents the said fact is not disputed.

12. If there is a failure of examination, then in that case, petitioners cannot claim any equity. A failure of examination would entail the whole process being vitiated. The question is whether selection process stands vitiated. Admittedly, the question paper of English Shorthand was not traceable with respondents at the time of reassessment. In absence of the question paper, reassessment of the answer sheets may not be possible. Only Marathi question paper was found. The respondents had also not conducted test in July/August 2011 as per the promotional orders. It was only if the performance of petitioners was found unsatisfactory in the test that was to be conducted in July/August 2011, they were liable to be reverted. In the present case, no such test was conducted. The mark list was given to petitioners upon the applications of petitioners, wherein the

petitioners are shown to have got more marks. The eligibility of the petitioners is not disputed. The petitioners possessed the eligibility criteria for the posts they are promoted. The explanation is not called for from petitioners before reverting petitioners. The petitioners had worked for one and half year on the promotional posts. In absence of assessment of English Shorthand papers, the respondents could not have arrived at a conclusion that the selection process was vitiated on account of mistakes committed in giving the marks.

13. Before reverting petitioners after one and half years of having worked at the promotional posts, it was necessary to atleast issue a show cause notice to them calling for the explanation. The respondents have also not produced on record the marks which are allotted to these petitioners after reassessment of the papers. The respondents in the affidavit ought to have clarified as to how the petitioners marks are reduced and that of some other candidate has been increased. The said record is also not forth coming, though twice affidavits are filed. In the affidavit only a statement is made that, upon reassessment it was found that though petitioners committed more mistakes they are given more marks than the representationist who had committed less mistakes and is given less marks. What are the marks allotted are not brought on record and that can be only with regard to the Marathi Shorthand papers. English Shorthand papers were not reassessed in

absence of question papers. The respondents should have atleast come out with the case as to how marks of the petitioners were reduced upon reassessment, however, that is not the case. In absence of all the aforesaid facts, the order of reversion does not appear to be proper.

14. We are told that petitioner nos.2 to 5 have subsequently without prejudice to their rights participated in the fresh selection process and are promoted to the promotional posts. The petitioner no.1 did not appear in any fresh selection process as per the contention of the parties. As in view of the fresh selection process, petitioner nos.2 to 5 are already selected and have joined promotional posts, the only question with them would be the date they would be deemed to be on the promotional posts. In that fresh selection process they are already selected so it would be deemed that they have passed the test. As far as petitioner no.1 is concerned, the test was not held by the respondent in July/August 2011. The petitioner no.1 did not get opportunity to appear for the test. Considering the above we pass following order:

**ORDER**

- (i) The order of reverting petitioners is quashed and set aside.
- (ii) The petitioners shall be deemed to be on the promotional posts as per the promotional orders dated 03.03.2011.

(iii) The respondents may conduct test of petitioner no.1 for English Shorthand and Marathi Shorthand, so also English Typing and Marathi Typing as per the Note 2 of the promotional order dated 03.03.2011, if they so wish to.

(iv) Though the order of reversion is set aside and it will be deemed that the petitioners are on the promotional posts as per the order dated 03.03.2011, we are not giving them the actual monetary benefits. However, the said period shall be considered notionally for further benefits and consequences.

15. Writ Petition is disposed of. No costs.

**(ANIL S. KILOR)**  
**JUDGE**

**(S. V. GANGAPURWALA)**  
**JUDGE**