

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12649 OF 2021

BADHE SUBHASH BHIMAJI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.T.Shelke, Advocate for the petitioner.
Mr.P.K.Lakhotiya, AGP for respondent Nos. 1 and 2.
Mr.S.S.Wagh, Advocate for respondent No.3.

(CORAM : RAVINDRA V. GHUGE AND
S.G. DIGE, JJ.)

DATE : APRIL 11, 2022

PER COURT :

1. We have heard the learned Advocates for the petitioner, respondent No.3 and the learned AGP for the State.

2. The petitioner's case, un-disputedly is identical to the facts noticed by the learned Division Bench of this Court in Writ Petition No.14978/2019 filed by Ramnath Bhausahab Walunj Vs. The State of Maharashtra and others, decided on 31.01.2021 and in WP No.13278/2021, Macchindra Shankar Shinde Vs. The State of Maharashtra and others, decided on 02.12.2021.

3. The petitioner has been promoted to the post of Jr.Clerk from the post of Peon. The approval was refused, akin to the cases of Ramnath Bhausahab Walunj and Macchindra Shankar Shinde. Both belong to the same Institution. It has been held in paragraph Nos. 4 to 9 in Ramnath Bhausahab Walunj as under :-

"4. *In present case, it would be pertinent to refer to Schedule 'F' of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, item '3', reading, thus,*

"3. Guidelines for fixation of seniority of non-teaching staff:

Clerks: *The clerical and supervisory posts in the channel of promotion comprise Junior Clerk, Senior Clerk, Head Clerk and Superintendent, Seniority of Junior Clerks in a School or Schools shall be determined on the basis of the date of appointment of the persons concerned. The post of Senior Clerk shall be filled in by promotion of seniormost Junior Clerk. The posts of Head Clerk and Superintendent shall be filled in respectively by promotion of senior-most Senior Clerk and seniormost Head Clerk, respectively.*

Librarian: *In the case where the Management runs only one School a seniority list of Librarian need not be maintained as the post is an isolated one. In case where the Management runs more than one School a seniority list of Librarian shall be maintained on the basis of the date of appointment. The Librarian shall not be held eligible for*

promotion to any other post.

Laboratory Assistants: *A seniority list of Laboratory Assistants shall be maintained on the basis of the date of appointment. The incumbents of the posts shall not be held eligible for promotion to any other post.*

Lower Grade Staff: *A common seniority list of **Laboratory Attendant, Naik, Oilman, Machine Attendant, Peon, Watchman, Chowkidar, Sweeper, call-woman, Kamathi, Attendant, Laboratory Hamal, Liftmen** and such other lower grade staff, if any, shall be maintained on the basis of the dates of their appointment. **If any of the lower grade staff improves his qualifications** as prescribed either **for the post** of Laboratory Assistant or **Clerk, such employee should be given preference while filling in the said post** according to his place in seniority. ”*

5. *Schedule speaks of giving preference to an incumbent employee improving his qualifications, to be considered for promotion to the post of junior clerk.*

6. *Apart from aforesaid, perusal of the government resolution dated 28-10-2004 would show that it does not speak of promotional post to be filled in by direct recruitment. Non revision of staffing pattern would not be a ground to detain recruitment on a available post.*

7. Taking into account the purport underlying the decision relied on, on behalf of the petitioner, it appears that the rejection to approve promotion of petitioner on the post of clerk would not be tenable. The reasons given in the impugned order as well as those in the affidavit in reply are not the reasons to detain an appointment on the post which otherwise would be available to the petitioner in normal course.

8. For all aforesaid reasons coupled with decisions relied on behalf of petitioner, namely in the cases of **Ashok s/o. Shankarrao Shinde Versus Probodhan Shikshan Sanstha and others**, reported in 1999 (1) Bom. C.R. 800 and **Ramesh Shivram Khairnar Versus State of Maharashtra and others**, reported in 2003 (4) Bom. C.R. 470, it would be expedient that the impugned order is set aside.

9. As such, the writ petition is allowed in terms of prayer clause (B) and respondent no.2 shall pass appropriate orders on proposal submitted for petitioner's promotion as junior clerk. Rule is made absolute accordingly."

4. In Macchindra Shinde's case (supra), this Court has held in paragraph Nos. 1 to 6 as under :-

"1. The proposal seeking approval to the promotion of the Petitioner is rejected. The Petitioner is promoted to the post of Junior Clerk. The proposal submitted seeking approval to the

promotion of the Petitioner as a Junior Clerk is rejected basically on the grounds that the said post has to be filled in by nomination and not by promotion, there is ban on recruitment and the Seniority List is not annexed.

2. *We have heard the learned Counsel for the Petitioner, the learned A.G.P for Respondents No. 1 and 2 and the learned Counsel for Respondent No. 3 / Management.*

3. *The issue, that the post of Junior Clerk can be filled in by promotion is no longer res-integra in view of the Judgment and Order of the Division Bench of this Court in Writ Petition No. 14978 of 2019 dated 13.01.2021. It has also relied on the earlier Judgment of the Division Bench of this Court and held that the post of Junior Clerk can be filled in by promotion from Class-IV post.*

4. *In view of the fact that the post can be filled in by promotion, ban on recruitment would not apply.*

5. *As far as Seniority List is concerned, the Management shall forward the seniority list to the Education Officer within a period of two (02) weeks from today.*

6. *The impugned order is set aside. The Education Officer shall re-consider the proposal seeking approval to the promotion of the Petitioner afresh and decision shall be taken preferably within a period of four (04) months."*

5. In view of the above and for the same reasons, this petition is disposed off by quashing the order dated 21.10.2021 issued by the

Education Officer (Secondary), Zilla Parishad, Ahmednagar with the direction that he shall reconsider the case of the petitioner and pass an appropriate order on or before 15.07.2022 by considering the GR dated 28.01.2019, by which the staffing pattern was formalized.

6. Needless to state, the Management shall forward the seniority list to the Education Officer within 3 (three) weeks from today.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)