



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2049 OF 2022

1. Shri Kisan S/o. Sidhuji More,
Age 53 years, Occu. Service,
R/o. Damodar Colony, Kathora
Road, Amravati, Tq. And District:
Amravati.
2. Dharamraj S/o. Dashrath Chinchkhede,
Age 53 years, Occu. Service,
R/o. Post Shegaon, Near Shegaon Naka,
Tq. & District : Amravati.
3. Kiran S/o. Pandurangsa Makwane,
Age 57 years, Occu. Service,
R/o. Patvi Pura, Budhwara, Amravati,
Tq. And District : Amravati.
4. Rajesh S/o. Deorao Ingole,
age 49 years, Occu.Service,
R/o. Sharda Nagar, Near AMC
School, Amravati.
5. Vijay S/o. Sheshrao Wade,
Age 56 years, Occu. Service,
R/o. Gurudeo Nagar, Amravati,
Tq. and District : Amravati.
6. Sudhakar Diwanji Khorgade,
Age 57 years, Occu. Service,
R/o. C/o. Rajendra Wankhade,
Kishor Colony, Amravati,
Tq. and District : Amravati.
7. Kiran S/o. Vinayak Sable,
Age 53 years, Occu. Service,
R/o. Balkrushna Nagar,
Zade Layout, Wardha.

8. Rajendra S/o. Pandurang Wankhade,
Age 50 years, Occu. Service,
R/o. Kishor Colony, Near Pathya
Pustak Mandal, Amravati.

.... **PETITIONERS.**

// **VERSUS** //

1. Agriculture Produce Marketing Committee,
through its Chairman/ Secretary,
Vilas Nagar Road, Amravati,
Tq. And District : Amravati.
2. Pawan S/o. Manohar Deshmukh,
Age 40 years, Occu. Service,
R/o. Shirala, Amravati,
District : Amravati.

.... **RESPONDENTS.**

Shri R.P.Joshi, Advocate for Petitioners.

Shri S.V.Bhutada, Advocate for Respondent No.1.

Shri R.L.Khapre, Sr. Adv. a/b. Shri S.S.Shingane, Advocate for Respondent No.2

CORAM : **ANIL S. KILOR, J.**
DATED : **AUGUST 18, 2023**

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. In the present writ petition the challenge is raised to the promotion of respondent No.2 as 'Assistant Secretary' in the respondent

No.1 Agriculture Produce Market Committee (APMC), on the ground that erroneous criteria for promotion has been adopted to favour the respondent No.2.

4. The petitioners are the employees of the respondent No.1- APMC. It is the case of the petitioners that the APMC has passed Resolution No.26 on 08/09/2020 prescribing minimum qualification condition for the post of Assistant Secretary (Promotional) and thereby it is resolved that the candidate should have passed oral and written examinations, as prescribed by the State Marketing Board, Pune, for selection of panel secretaries. It is contended that the said eligibility condition is applicable to the post of 'Secretary' and not to the post of 'Assistant Secretary'.

5. It is further submitted that the selection panel of secretaries was effective during the period between 2013 and 2016 and thereafter it is not in existence.

6. It is contended that there are Market Committee Employees Service Regulations, 1969 (hereinafter referred to as "the Regulations of 1969"), wherein the minimum eligibility criteria is prescribed for the post of 'Assistant Secretary'. As per Regulation 11 of the Regulations of 1969, the candidate should possess Bachelor's Degree.

7. Therefore, it is alleged that to favour the respondent No.2 a criteria, contrary to the Regulations of 1969 has been prescribed.

8. On the other hand, Shri Khapre, learned Senior Advocate has drawn attention of this Court to the definition of 'Secretary', which according to him, includes a Joint, Deputy or Assistant Secretary. He, therefore, submits that the minimum eligibility criteria prescribed for the post of Secretary is equally applicable to the post of Assistant Secretary.

9. The argument made by learned Senior Advocate Shri Khapre can be considered as an admission that the criteria which is applied for promotion of respondent No.2 is the minimum eligibility criteria for the post of Secretary. In the circumstances, the only question remains, whether the APMC is right in applying the minimum eligibility criteria of the post of Secretary to the post of Assistant Secretary.

10. Under Regulation 11 of the Regulations of 1969, the post of Secretary and Assistant Secretary have been shown separately and different minimum eligibility criteria is also shown against each of the said post. The eligibility criteria for the post of Secretary is B.Sc. (Agri.) or B. Com. or B.A. (Economics) or LL.B. Whereas, for the post of Assistant Secretary the qualification prescribed is graduation.

11. Thus, it is evident that for both the posts i.e. Secretary and Assistant Secretary different criteria are prescribed under the Regulations of 1969. Moreover, the pay scales for both the posts are admittedly different. Therefore, it cannot be said that the criteria applicable for the promotion to the post of Secretary can be applied for promotion to the post of Assistant Secretary.

12. As far as the argument made by the learned Senior Advocate Shri Khapre that the definition of word ‘Secretary’ includes ‘Assistant Secretary’ and therefore, the minimum eligibility criteria applicable to the post of Secretary is also applicable to the post of Assistant Secretary, is misconceived and needs to be rejected at the threshold. The definition of word ‘Secretary’ at any stretch of imagination cannot be applied for the purpose of appointment or promotion to the post of ‘Assistant Secretary’ for the reasons recorded herein above.

13. The Regulation 46 of the Regulations of 1969 relates to promotion, which says that promotion is to be given by seniority and only in exceptional cases the promotion can be given without following the seniority. The petitioners are admittedly senior to the respondent No.2 and while denying promotion to the petitioners and promoting the

respondent No.2 no reasons for such exception have been recorded which are mandatory to be recorded as per Regulation 46 of the Regulations of 1969.

14. In the circumstances, I find substance in the submissions of the learned counsel for the petitioners that the promotion of the respondent No.2 as Assistant Secretary is contrary to law and not sustainable in the eyes of law.

15. Accordingly, I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned Resolution No. 26, dated 08/09/2020 imposing condition to have recommendation of panel of Secretary appointed by the Board and Resolution No.13, dated 23/01/2021, resolving to grant promotion to respondent No.2, passed by APMC, Amravati are hereby quashed and set aside.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)