



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 4189 OF 2020

PETITIONER : Gopal S/o. Kisanji Dhone, Aged : 51
Years, Occupation : Service as
Laboratory Attendant, R/o. C/o. Shri
Mathuradas Mohta College of Science,
Sakkardara, Umred Road, Nagpur.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through its
Secretary, Higher and Technical
Education, Mantralaya, Mumbai –
400 032.

2. Joint Director, Higher Education,
Nagpur Division, Nagpur.

3. Nagpur Shikshan Mandal, Sakkardara
Chowk, Umred Road, Nagpur, through
its Secretary/President.

4. Shri Mathuradas Mohta College of
Science, Sakkardara, Umred Road,
Nagpur, through its Principal.

5. Avinash S/o. Late Shankarrao Kholkute,
Aged about 53 years, Occ. Service, R/o.
63, Vitthal Nagari No.1, Near Barai
Samaj Mandir, Nagpur.

Mr. A.R. Ingole, Advocate for the Petitioner.
Mr. P.P. Pendke, AGP for Respondent Nos.1 & 2.
Mr. V.P. Marpakwar, Advocate for Respondent Nos.3 & 4.
Mr. S.S. Ghate, Advocate for Respondent No.5.

CORAM : **SMT. ANUJA PRABHUDESSAI AND**
 MRS. VRUSHALI V. JOSHI, JJ.

DATE : **30th NOVEMBER, 2023.**

ORAL JUDGMENT (Per: Smt. Anuja Prabhudessai, J.)

. Leave granted to the Petitioner to carry out amendment as per the order dated 20.09.2023. Amendment to be carried out forthwith.

02] **Rule.** Rule made returnable forthwith. Petition is heard finally with the consent of learned counsel for the respective parties.

03] This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

“(i) By an appropriate Writ, Order and/or Direction, quash and set aside the impugned order of rejection of approval to the promotion of the petitioner dated 02.09.2020 issued by respondent no.2-Joint Director Higher Education, Nagpur Division, Nagpur (Annexure-F) and upon quashing the same direct the respondent no.2 to consider the petitioner by giving approval to the promotion of the petitioner on the post of Junior Clerk;

(ii) by an appropriate Writ, Order and/or Direction, hold and declare that the Government Gazette/Notification dated 06.06.2017 issued by respondent no.1-State Government (Annexure-G) is

being ultra-vires the Article 14 of the Constitution of India.”

04] The Petitioner was appointed as a Laboratory Attendant in Respondent No.4-College. The Petitioner claims that being the senior-most employee in Group-D category, he is entitled for promotion to Group-C post. The Petitioner had also given consent for being considered for promotion by combined seniority list, and the Respondent No.4-College had submitted the proposal of the Petitioner for promotion. The Respondent No.2 by order dated 02.09.2020 rejected the claim of the Petitioner for promotion to the post of Junior Clerk Group-C on the ground that the post of Junior Clerk is an administrative post and that only the employees from Group-D, as specified in Government Gazette dated 06.06.2017, are entitled to be considered for promotion to Group-C post.

05] The Petitioner claims that he was declined promotion since the post of Laboratory Attendant is not included in the Government Gazette dated 06.06.2017. The Petitioner submits that the said Notification creates sub-classification in class of

employees in Group-D, without any reasonable basis. It is contended that the Government Gazette/Notification is arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

06] It is not in dispute that even before filing of the petition, the Respondent No.5 was already appointed as a Junior Clerk and approval for the promotional post was also granted. The Petitioner suppressed the above fact and filed the petition without impleading him as party respondent. The Respondent No.5 came to be impleaded only after he sought intervention in that petition.

07] It is also to be noted that the petition proceeds on the basis that the Petitioner is the senior-most employee in Group-D category. The seniority list, which is placed before us, indicates that the Petitioner was appointed on 01.12.1992 and his name is at Serial No.15 in the seniority list of Group-D category, thus falsifying his claim that he is the senior-most employee in Group-D category.

08] Now, coming to the merits of the matter, undisputedly there are two Notifications both dated 6th June, 2017. Notification No.90 specifies the posts eligible for promotion, whereas Notification No.91 prescribes requisite qualification for the post of Junior Clerk from Group-D to Group-C, and the same is as under:

“3. Appointment to the post of Clerk-Typist, Group “C” in Government offices, outside Greater Mumbai shall be made either,-

(a) by promotion of a suitable person, on the basis of seniority subject to fitness from amongst the persons holding the post in Group “D”, having not less than three years of regular service on the post in Group “D” and possess qualifications mentioned in sub-clauses (ii) and (iii) and clause (b); or

(b) by nomination from amongst the persons, who,-

(i) are not less than nineteen years of age and not more than thirty eight years of age in case of persons belonging to General Class and not more than forty three years of age in case of persons belonging to Backward Class;

(ii) possess a degree; and

(iii) possess the Government Commercial Certificate or Computer Typing Certificate with a speed of not less than 30 words per minute in Marathi Typewriting or 40 words per minute in English Typewriting; or (c).....”

09] The Notification No.91 stipulates that appointment to the post of Clerk-Typist Group-C in Government Offices can be made either by promotion or nomination. The appointment by promotion is on the basis of seniority subject to fitness from amongst the persons holding the post in Group-D, having not less than three years of regular service on the post in Group-D and possess a degree and the Government Commercial Certificate or Computer Typing Certificate with a speed of not less than 30 words per minute in Marathi Typewriting or 40 words per minute in English Typewriting.

10] The Petitioner does not dispute the authority to prescribe such qualification nor does he claim that the requirement of possessing a degree as eligibility criteria is not fair, reasonable and that it is arbitrary. The fact situation is that the Petitioner does not possess a degree and hence he was not eligible for consideration for the post of Clerk-cum-Typist in Group-C category. The Petitioner not being an aggrieved person, he has no *locus standi* to question the promotion of Respondent No.5. Hence, the petition is misconceived and is dismissed.

11] Rule is discharged. No order as to costs.

12] It is stated that because of the pendency of the petition, pay fixation of Respondent No.5 has been stalled. Now, that the petition is disposed of, the Respondent No.2 may proceed with the pay fixation.

(VRUSHALI V. JOSHI, J.)

(ANUJA PRABHUDESSAI, J.)

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