



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.845 OF 2018

1. Dayanand Anglo Vedic College
Trust and Management Society
New Delhi's Dayanand Institutions,
Solapur
 2. Damani Bhairuratan Fatehchand
Dayanand College of Arts and Science,
Solapur.
 3. Prakash Kamlakar Divanji
Age-51, Occ. -Service
160, Janki Nagar, Vijapur Road,
Jule Solapur, Solapur-413004
- ...Petitioners

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai 4000032
2. The Director of Higher and Technical
Education Department, Pune
3. The Regional Joint Director,
Higher and Technical Education
Department Solapur Division, Solapur
4. Punyashlok Ahilyadevi Holkar
Solapur University,

Dnyanteerth Nagar, Kegaon,
Solapur-Pune National Highway
Solapur-413255.

Through the Vice Chancellor.

...Respondents

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Adv. Vijay Killedar for the Petitioners.

Adv. S. P. Kamble, AGP for the Respondent State.

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**CORAM : BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.**

DATE : 8th JANUARY, 2025

ORDER : (PER ASHWIN D. BHOBE J.) :-

1. By the present Petition, the Petitioners assail the communication/order dated 04.10.2014 issued by Respondent No. 3 to the extent it declines to include the name of Petitioner No. 3 in the salary bills w.e.f. 13.07.2011, thereby depriving the Petitioner No. 3, his salary from 13.07.2011 to September, 2014.

2. Factual Matrix :-

(a) Petitioner No. 3 was appointed on the post of Junior Clerk in the Petitioner No. 2 College, run and managed by the Petitioner No.1 Management w.e.f. 14.09.1992.

(b) Petitioner No. 3 was promoted to the post of Senior Clerk on 01.03.2008.

(c) On 01.03.2009, vacancy on the post of Registrar in the Petitioner No. 2 College arose on account of retirement of the incumbent of the said post. Petitioner No. 3 was given charge of the said post of Registrar.

(d) Respondent No. 3 issued no objection certificate on 06.06.2011, permitting the Petitioner No.1 to appoint eligible candidate to the said post by way of nomination, as per the provisions of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of non-teaching employees) Rules, 1984 (Standard Code).

(e) Petitioner Nos. 1 and 2 issued advertisement dated 10.06.2011, inviting applications from eligible candidates for the said post of Registrar.

(f) Petitioner No. 3 being found eligible, holding the requisite qualification and possessing administrative experience of working in similar capacity for more than three years, was appointed on the said post of w.e.f. 13.07.2011.

(g) Respondent No. 2 on 26.04.2013, directed the Respondent No. 3 to grant approval to the appointment of Petitioner No. 3 on the said post of Registrar of the Petitioner No. 2 College and to include his name in the pay bill. The Respondent No. 2 while issuing the said direction, found the Petitioner No. 3 satisfying the eligibility requirement under the Standard Code, more particularly, the administrative

experience on the post of Senior Clerk, occupied by the Petitioner No. 3 for more than three years.

(h) Respondent No. 3 by his communication/order dated 4.10.2014, granted approval to include the name of the Petitioner No. 3 in the salary payment, however for the period commencing from September, 2014.

(i) The Petitioner No. 3 being aggrieved by the rejection of the approval for including the name of the Petitioner No. 3 in the salary/bill payment from the date of his appointment on the said post i.e. 13.07.2011, made a representation dated 09.02.2017, before the Respondent seeking reconsideration of the matter to the extent of inclusion of the name of the Petitioner No. 3 in the salary/bill payment w.e.f. 13.07.2011.

(j) The Petitioner being aggrieved by the communication dated 04.10.2014, to the extent of non-inclusion of his name in the salary/ bill payment w.e.f. 13.07.2011, has approached this Court by filing the present Petition on 28.07.2017.

3. Respondent Nos. 1, 2 and 3 filed their affidavit-in-reply dated 16.12.2020 opposing the present Petition. The stand of the Respondents in their reply is that though the Petitioner No. 3 was appointed on the post of Registrar of the Petitioner No. 2 College w.e.f. 13.07.2011, however the same was subject to approval of the

Government Authorities. It is the contention of the Respondent Nos. 1, 2 and 3 that while considering the representation dated 13.07.2011 and 20.07.2011 submitted by the Petitioners, the said Respondents realized that the Petitioner No. 3 did not meet the experience criteria. It is further contended that the post of Registrar is in Class-II with supervisory responsibilities.

As per the Respondents, the approval dated 26.04.2013 was reconsidered by the Respondent No. 2 and by order dated 16.09.2014, the Respondent No. 3 reviewed its decision dated 26.04.2013 and granted permission to include the name of the Petitioner No. 3 in the monthly pay bills i.e. from September, 2014. The said Respondents by relying on clause 3(II)(iii)(c) of the Standard Code Rule, 1984 submitted that the Petitioner did not satisfy the said criteria.

4. By order dated 07.12.2021, on the request of the Petitioners, Petitioners were granted leave to amend the Petition by raising grounds to challenge the order dated 16.09.2014.

5. Mr. Vijay Killedar, learned counsel for the Petitioners urged the following contentions.

(a) That the Petitioner No. 3 was discharging duties on the

post of Senior Clerk of the College for a period of three years. Thus, according to the Petitioners, experience of the Petitioner No. 3 on the Post of Senior Clerk constitutes 'the administrative experience, as contemplated under Rule (II)(iii) (c) of the Standard Code.

(b) The order dated 16.09.2014 passed by the Respondent No. 2 is without jurisdiction as the Respondent No. 2 has reviewed the order dated 26.04.2014 firstly in the absence of any provision of review and secondly, without any notice/hearing to the Petitioners, thus, in breach and violations of the principles of natural justice.

6. *Per contra*, Mr. S. P. Kamble, learned AGP for the State has urged the following contentions.

(a) Rule 3(II)(iii)(c) of the Standard Code requires a candidate to hold a administrative post so as to possess administrative experience of not less than three years. According to the Respondent, the Petitioner No. 3 does not satisfy the said criteria as the Petitioner No. 3 was not occupying any administrative post.

(b) The order dated 26.04.2013, required reconsideration and as such, the said order dated 26.04.2013 was reviewed by the order dated 16.09.2014.

7. The question that falls for consideration on the basis of the rival contentions of the parties, is whether the Petitioner No. 3 by virtue of rendering service on the post of Senior Clerk in the College for a period of not less than three years would meet/satisfy the experience criteria as contemplated under Rule 3(II)(iii)(c) of Standard Code ?

8. For the sake of convenience, Rule 3(II)(iii)(c) of Standard Code is transcribed herein below.

(II) Registrars of the Colleges, and other Non-Teaching posts included in Class II.-(i) Except as otherwise provided in the Acts, appointments to these posts shall be made either by promotion or by nomination in the ratio of 50:50.

(ii) Appointment by promotion shall be made on the basis of seniority-cum-merit from amongst the persons-

- (a) Who are graduates, and
- (b) Who possesses five years experience in Class III posts either in the Universities or in the affiliated Colleges or the Recognized Institutions :

Provided that, in case of persons who have crossed the age of 45 years, the educational qualifications may be relaxed by the Competent Authority.

(iii) Appointment by nomination shall be made from amongst the persons-

- (a) who are not less than 25 years of age and unless already in the service of the University, or affiliated colleges not more than 35 years of age ;
- (b) who possesses a degree of any Statutory University in addition to the qualifications prescribed by the competent authority for a specific post ;
- (c) **who have an administrative experience of not less than 3 years in a similar capacity ;** and
- (d) the selected candidate shall be on probation for a period of 2 years during which he shall have to pass the Departmental Examination according to the rules prescribed.

Analysis :-

9. The controversy revolves around the words ‘administrative experience’ and ‘similar capacity’ as used in Rule 3(II)(iii)(c) of Standard Code. According to the Petitioners, the said Rule requires a candidate to have experience in administration for three years, whereas, according to the Respondent Nos. 1 to 3 for the post of Registrar, it is necessary to have an experience in the post similar or at par of the Registrar.

10. On reading of the Rule 3(II)(iii)(c) of Standard Code, we are of the opinion that the qualification for appointment by

nomination to the post of Registrar require three years experience in administration. The said criteria does not prescribe that the experience should be acquired by holding a post similar or at par with the post of Registrar.

The words used in Rule 3(II)(iii)(c) of Standard Code are clear and unequivocal. In the event the contention of the Respondent Nos. 1 to 3 is accepted then the said Rule would have used the words 'in a similar post.' On the contrary, the use of the word 'in a similar capacity' would mean experience in administration.

11. The Respondent No. 2 having understood the said Rule 3(II)(iii)(c) of Standard Code, as is evident from the fact that the Respondent No. 2 had treated the experience of the Petitioner No. 3 on the post of senior clerk and had accorded his approval dated 26.04.2013 to the appointment of Petitioner No. 3 on the post of Registrar.

12. The Petitioners have also questioned the order dated 16.09.2014 passed by the Respondent No. 2 by which the Respondent No. 2 has reviewed the order dated 26.04.2013. The grievance of the Petitioner is threefold : firstly, that the Respondent

No. 2 has no power to review, secondly, the order dated 16.09.2014 is vague and cryptic and thirdly, the order dated 16.09.2014 being passed in violation of principles of natural justice.

We have held that Rule 3(II)(iii)(c) of Standard Code requires three years experience in administration. There is no dispute of the Petitioner No. 3 occupying the post Senior Clerk in the College.

In view of the same the challenge to the order dated 16.09.2014 would be academic.

However, the Petitioners having raised the said contention, we shall deal with the same. The Respondent Nos. 1 to 3 were unable to point out any provision by which the Respondent No. 2 could have reviewed the order dated 26.04.2013. Similarly, despite the Petitioner having raised the challenge to the order dated 16.09.2014 on the ground of it being in violation of principles of natural justice, the said contention has gone unrebutted. The order dated 16.09.2014 does not record any reasons for reviewing the order dated 26.04.2013. The order dated 16.09.2014 is therefore liable to be set aside and as such,

set aside.

13. For the reasons recorded herein above, we quash and set aside the order dated 16.09.2014 by restoring the order dated 26.04.2013.

14. The order dated 04.10.2014 is modified and consequently, the Respondent No.2 is directed to grant approval to the appointment of the Petitioner as Registrar w.e.f. 13.07.2011, with the further direction to the Respondents to pay salary to the Petitioner No. 3 pertaining to the period w.e.f. 13.07.2011 to September, 2014, with all consequential benefits of pay scale and seniority. Respondent No.2 to issue a specific order to that effect.

The above exercise be completed within a period of eight weeks from today.

15. The Writ Petition is disposed off as no orders cost.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)