

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 581/2014

- 1) Gulab Kisan Wanjari,
Aged about 35 years,
Occ. Service, C/o Shri B.M. Deshmukh,
Plot no.10, Dhanwantari Nagar,
Umred Road, near Bada Tajbagh, Nagpur.
- 2) Harish Shripatrao Balpande,
Aged about 38 years,
Occ. Service, At & Post Ladgaon,
Tahsil Katol, District Nagpur.
- 3) Sankhpal Surajlal Bhagat,
Aged about 35 years, Occ. Service,
R/o Dhamnewada, Post Dhandegaon,
Tahsil and District Gondia.
- 4) Jitendrakumar Tarachand Mendhe,
Aged about 33 years, Occ. Service,
At & Post Khamari, Tq.& Dist. Gondia.
- 5) Vinod Dinkarrao Hodbe,
Aged about 37 years, Occ. Service,
R/o Ward no.2, Telang Mohalla,
Chamorshi, Tq. Charmorshi,
Dist. Gadchiroli.
- 6) Sushil Falgunrao Waghaye,
Aged about 32 years, Occ. Service,
At post Kesalwada/ wagh,
Tah. Lakhni, Dist. Bhandara.
- 7) Bhagirath Shivram Sapate,
Aged about 33 years,
Occ. Service, At & Post Lakhori,
Tah. Lakhni, Dist. Bhandara.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Agriculture Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner of Agriculture,
M.S., Sakhar Sankul,
Shivaji Nagar, Pune-05.
- 3) The Divisional Joint Director of Agriculture,
Nagpur Division, Administrative Building no.2,
7th floor, Civil Lines, Nagpur.
- 4) Hiralal Dhonduji Patle,
Aged Major, Occ. Service,
O/o the Taluka Agriculture Officer,
Ramtek, District Nagpur.
- 5) Mahendra Jaglal Dihare,
Aged Major, Occ. Service,
O/o the Taluka Agriculture Officer,
Gadchiroli, District Gadchiroli.
- 6) Gendlal Sukhram Uikey,
Aged Major,
O/o the Taluka Agriculture Officer,
Sakoli, District Bhandara.
- 7) Radheshyam Adku Khobragade,
Aged Major,
O/o the Taluka Agriculture Officer,
Sakoli, District Bhandara.
- 8) Naresh Mohanlal Harinkhede,
Aged : Major,
O/o the Taluka Agriculture Officer,
Charmorshi, District Gadchiroli.
- 9) Yogesh Prabhakar Randive,
Aged : Major,
O/o the Taluka Agriculture Officer,
Bhamragarh, District Gadchiroli.

- 10) Ku. Sheshna Udaramji Koram,
Aged : Major,
O/o the Taluka Agriculture Officer,
Sadak Arjuni, District Gondia.
- 11) Ku. Rohini Changdeo Pendor,
Aged : Major,
O/o the Taluka Agriculture Officer,
Mul, District Chandrapur.
- 12) Ku. Pallavi Dilip Uikey,
Aged Major, Office of the
Divisional Joint Director of Agriculture,
Administrative Building no.2, Civil Lines,
Nagpur.

Respondents.

Shri D.M. Kakani, G.K. Bhusari Advocates for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondent nos. 1 to 3.

Shri S.C. Deshmukh, Id. Advocate for respondent nos. 4 to 12.

**Coram :- Shri Rajiv Agarwal (Vice-Chairman) (A) &
Shri J.D Kulkarni (Vice-Chairman) (J)**

JUDGEMENT

PER : Vice-Chairman (J).

(Delivered on this 11th day of August, 2017)

Heard Shri D.M. Kakani, Id. Counsel for the applicants,
Shri A.M. Ghogre, Id. P.O. for respondent nos. 1 to 3 and Shri S.C.
Deshmukh, Id. Counsel for respondent nos. 4 to 12.

2. All the applicants in this O.A. entered in the services of Agriculture Department on the post of Agriculture Assistant on the respective dates mentioned in para-2(2) of the O.A. All of them are the degree holders.

3. The Government of Maharashtra has framed the Recruitment Rules for the post of Agriculture Supervisor for which Agriculture Assistant is a feeder post for promotion to the post of Agriculture Supervisor. As per the said rules quota is fixed for the post of Agriculture Supervisor for degree holders and diploma holders and the said quota is 60:40 respectively.

4. According to the applicants, the respondent nos. 4 to 12 entered in the services of respondent no.1. They were initially holding the educational qualification as diploma holder. They subsequently got degree. However, they have obtained the degree without permission of the Government. As per G.R. dated 2/11/1988, if the Government employee wants to take higher education while in service, he has to obtain prior permission from the department. The respondent nos. 4 to 12 without obtaining permission from the department, upgraded their qualification and therefore they cannot be said to be degree holders in state level service.

5. It was obligatory on the part of respondent nos. 1 to 3 to prepare separate inter-se seniority list of the employees holding diploma and degree so as to consider them for promotion. Such inter-se seniority shall be in accordance with the basic qualification at the time of entry in the service as Agriculture Assistant.

6. The respondent nos. 4 to 12, were given promotion without following proper procedure. Since they have not obtained degree without permission of the department, they cannot be treated as senior and entitled to in the gradation list of Graduate Agricultural Assistant.

7. The applicants are therefore claiming following main reliefs:-

“(i) Quash and set aside the order of promotion issued by the respondent no.3, dated 26/2/2014, (Annexure-A-3) in respect of respondent nos. 4 to 12 on the post of Agriculture Supervisor;

(ii) Direct the respondent nos. 1 to 3 not to consider the cases of the Diploma-holders, who acquired the higher qualification without prior sanction of the Government while in service for promotion to the post of Agriculture Supervisor and direct the Agriculture Department to amend the Recruitment Rules by issuing a Notification under Article 309 of the Constitution of India’

(iii) Direct the respondent nos. 1 to 3 to prepare the inter-se seniority list of Diploma-holders and the Degree-holders considering their date of entry into the service and the educational qualification at the time of entry in the service on the post of Agriculture Assistant and only that list should be considered for promotion to the higher post considering the qualification of a particular candidate, which he possessed at the time of entry in the service;

(iv) Direct the respondent no.1 to amend the Recruitment Rules, by issuing a Notification under Article 309 of the Constitution of India to this effect as narrated in the Original Application:

(v) Direct respondent nos. 1 to 3 to consider the cases of the applicants for promotion front the quota meant for the Degree-holders for the post of Agriculture Supervisor, after preparing the separate seniority list of Degree-holders, considering their qualification at the time entry into the service.”

8. The respondent nos. 1 to 3 have filed reply-affidavit. Most of the facts are admitted. According to the respondents, the applicants have been appointed on the post of Agriculture Assistant in the year,2007 and they are all degree holders in B.Sc. (Agriculture). It is also admitted that the respondent nos. 4 to 12 at the time of their initial appointment were possessing diploma in Agriculture, but it is stated that they have acquired degree in B.Sc. (Agriculture), from Yashwantrao Chavan Maharashtra Open University, Nashik which is

equivalent degree certificate issued by Agriculture University, during their service period. The respondents also submitted that the Recruitment Rules dated 19/8/2004 the quota is given for promotion for degree holders and diploma holders. It is stated that vide order dated 26/2/2014 the respondent authority promoted 77 Agriculture Assistants to the post of Agriculture Supervisors from the quota of degree holders and the respondent nos. 4 to 12 have been promoted. As such as they were eligible for promotion as per rule 3 (1) of the Recruitment Rules and their seniority has been considered from their initial date of appointment to the post of Agriculture Assistants.

9. It is stated by the respondents that the respondents carried out amendment to the Recruitment Rules vide G.R. dated 28/9/2006. The said G.R. was however quashed by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in W.P.No. 8288/2005. The Hon'ble Tribunal also considered this aspect in O.A.Nos. 122 & 181 of 2007 with M.A.No. 127/2007 and it was held that no direction has been given to the respondents by the Hon'ble High Court to examine the rules and to prepare new rules. The respondents justified the promotion of respondent nos. 4 to 12 and so also their seniority. It is stated that the present applicants are juniors to respondent nos. 4 to 12 and therefore they are not entitled to promotion.

10. The respondent nos. 4 to 12 also filed reply-affidavit and submitted that after passing graduation, the entry regarding passing of graduation has been taken in their service book and they have been rightly placed in the gradation list. Their placement in the gradation list was not challenged by the applicants. They have been rightly placed in the gradation list in the year 2013, i.e., as on 1/1/2013. The respondent no.1 communicated to the respondent no.2 vide letter dated 5/3/2012 that there was no need to grant permission for completing graduation course under Yashwantrao Chawhan Maharashtra Open University (Annex-R-2-II). It is stated that the identical issue has been decided by this Tribunal at Aurangabad Bench in O.A.Nos. 253, 363 & 429 of 2005. These orders were challenged before the Hon'ble High Court in W.P.Nos. 8301/2005 & 8288/2005 and 8289/2005 and all the W.Ps. have been disposed of as withdrawn (Annex-R-4 -III).

11. The learned counsel for the applicant submits that the respondent nos. 4 to 12 have obtained degree without permission of the Competent Authority, i.e., Government and since they have obtained graduation degree without permission, they cannot be said to be Agriculture Assistant. The learned counsel for the applicant has invited our attention to the G.R. dated 2/11/1988 which is at P.B. page nos.202 to 205 (both inclusive). We have perused the said G.R. The

said G.R., nowhere says that the employee serving in the Govt. department must update their educational qualification with the permission of the Competent Authority. It only says that, if the employee wants to upgrade his qualification and wants reimbursement of the expenses for the same, then in that case he must obtain prior permission of the Government. There is nothing on record to show that there is any Rule or Circular which states that if the qualification is upgraded by the employee during service period without permission, the same will not be considered.

12. The learned counsel for the applicant submits that the respondent nos. 4 to 12 were diploma holders and merely because they have obtained graduation degree, they cannot be held senior to the applicants. It is stated that the seniority of respondent nos. 4 to 12 should have been considered from the date of degree and not from the date of their initial appointment. This issue has been considered by this Tribunal in O.A.Nos. 121 & 181 of 2007 in the case of **Janardan S/o Shamrao Tandale & Ors. Vs. State of Maharashtra & Ors.** The said Judgment is delivered by this Tribunal at Aurangabad Bench on 7/4/2008 and the Tribunal observed in para-17 as under :-

“We have examined the pleadings and documents on record. The Govt. Of Maharashtra by Govt. Notification dated 19th August,2004 was pleased to make the rules regulating

recruitment to the post of Agriculture Supervisor. Laboratories Inspector, Computer (Statistical) Branch, Agricultural Assistant, Laboratory Assistant in Group C in the Commissionerate of Agriculture, and Agriculture, Animal Husbandry, Dairy Development & Fisheries Department of Govt. of Maharashtra. These rules have been framed in exercise of the power conferred by the proviso to Article 309 of Constitution of India. The Govt. Of Maharashtra has framed these rules by exercising the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 3 is in respect of appointment to the post of Agriculture Supervisor / Laboratory Inspector / Computer (Statistical) Branch in Group C in the Commissionerate by promotion and by nomination. It is also not in dispute that, some of the Agriculture Assistant being aggrieved by the action of respondent nos. 1&2 promoting the Agriculture Assistants, possessing degree qualification at the time of initial appointment, by misinterpreting rule 3, of the recruitment rules, have approached this Tribunal challenging the actions of the respondents 1 and 2 in O.A. Nos. 253,363 and 129 of 2005. The Division Bench of this Tribunal while disposing of the above original applications has taken a view as under :-

When the rule position is absolutely clear and an ambiguous something, which is not there in the rule cannot be read into the rule. Therefore, there is absolutely no scope for drawing any interference that the seniority of degree holders who were initially diploma holders, but acquired degree qualification later shall count only from the date of acquisition of the degree. There are two baskets, one of degree holders and other of diploma holders. As per the provisions contained in the

seniority rules, the seniority gets regulated on the basis of continuous officiation. Therefore, the degree holders, who have acquired the degree qualification later do retain their original seniority on the basis of continuous officiation.”

13. The Tribunal has passed the order in O.A.Nos. 253,363 & 429 of 2005 on the similar issue and the order of the Tribunal was challenged in W.P.No.8301 of 2005 and Their Lordships of the Hon'ble High Court, Bench at Aurangabad has confirmed the view taken by the Tribunal. In W.P.No.8301/2005 the Hon'ble High Court has made it clear that the High Court has not given any directions to the respondent nos. 1&2 either for amendment or modification of the recruitment rules by issuing the G.R. nor has directed to issue G.R. for giving clarification to the interpretation of the Rule 3 of the recruitment rules.

14. We have also perused the order passed by this Tribunal in O.A.Nos. 253,363 & 429 of 2005. The copy of the order is placed on record at P.B. page nos. 263 to 268 (both inclusive). In the said Judgment Rule 3 of the Recruitment Rules has been considered and this Tribunal at Aurangabad Bench has observed in para nos. 4 to 6 as under :-

“(4) The Recruitment Rules as of 1983 as also amended by 1998 Rules and latest Rules of 2004 notified on 19th of August, 2004 provide that promotion shall be regulated on the basis of

seniority. Rule 3 of the 2004 Rules, which is at the center of the controversy provides as follows :-

(3) Appointment to the posts of Agriculture Supervisor / Laboratory Inspector / Computer (Statistical Branch) in Group C in the Commissionerate, shall be made either -

(a) by promotion of suitable person, on the basis of seniority subject to fitness from amongst the persons holding the posts of Agriculture Assistant / Laboratory Assistant, Group C having not less than three years regular service in that post.

Provided that the ratio for promotion amongst the persons who possess a degree and who do not possess a degree, diploma shall be 60:40 of the vacancies available for promotion; or

(b) by nomination from amongst candidates who-

(i) are not more than 30 years of age;

(ii) possess a degree or any other qualification recognized by the Government to be equivalent thereto,

(c) appointment by promotion and nomination shall made in the ratio of 70:30 respectively.

(5) It would be seen that the main Rule vide Clause (a) provides that promotion shall be regulated on the basis of seniority subject to fitness from amongst the persons holding the posts of Agriculture Assistants. The proviso to the said provision stipulates 60% for degree holders and 40% for diploma holders. There is no further proviso that the seniority of degree holders,

who were initially diploma holders shall be considered as from the date of acquisition of the degree qualification.

(6) When the rule position is absolutely clear and unambiguous something which is not there in the Rule cannot be read into the Rule. Therefore, there is absolutely no scope for drawing any inference that the seniority of degree holders, who were initially diploma holders but acquired degree qualification later shall count only from the date of acquisition of the degree. There are two baskets, one of degree holders and the other of diploma holders. As per the provisions contained in the seniority rules the seniority gets regulated on the basis of continuous officiation. Therefore, the degree holders, who have acquired the degree qualification later do retain their original seniority on the basis of continuous officiation.”

15. From the aforesaid circumstances, it will be thus crystal clear that the issue as regards seniority of the persons acquiring graduation qualifications during the service has already been dealt with by this Tribunal and same view has been confirmed by the Hon'ble High Court and even the Hon'ble Supreme Court. In such circumstances, the point raised by the applicants cannot be re-agitated and the issue cannot be reopened.

16. The learned counsel for the applicant has placed reliance on the Judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Nagpur in the case of **Avinash S/o Nanasaheb Barhate Vs. Nagpur Municipal Council and Ors. reported in 2014**

(4) Mh.L.J.,327. In the said case, the dispute was between graduate engineers and diploma holders engineers as regards their promotions by 50:50 representation in the next promotional post and the Hon'ble High Court has held that the preparation of two separate seniority lists for graduate engineers and diploma holders' engineers is must. We have carefully gone through the citations and we are satisfied that the facts of the said case are not analogues with the present set of facts. In the present case, the applicants as well as respondent nos. 4 to 12 are graduates in B.Sc. (Agriculture). The only difference is that respondent nos. 4 to 12 have obtained graduation during service and their seniority has been considered as per the Recruitment Rules from the date of their initial appointments and there is nothing wrong in it.

17. The learned counsel for the applicants submits that in similar set of facts in O.A. 194/2015 with Miscellaneous Application no. 367/2016 before the Hon'ble Tribunal Bench at Aurangabad the respondents have made a statement that they were planning to amend the Recruitment Rules and therefore the direction was given to amend the Recruitment Rules expeditiously and preferably within a period of six months. The said order is passed on 22nd September,2016. The said order might have been passed on the basis of some statement made by the learned P.O. However, the Hon'ble High Court, has already considered the issue and has not

given any direction to amend the rules and the recruitment rules amended by issuing a simple G.R. against the provisions of Article 309 of the Constitution of India has already been quashed. In the earlier Judgments it has already been observed that there is no ambiguity in the recruitment rules and therefore there is no need to amend the rules. Considering all these aspects, we do not find any illegality in the promotion and seniority given to the respondent nos. 4 to 12.

18. On a conspectus of discussion, we are satisfied that there is no merit in the O.A. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to cost.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A).