

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**COMMON ORDER IN O.A.NO. 70/2017
AND
O.A.NO. 786/2017 WITH M.A. 356/2017**

**01. ORIGINAL APPLICATION NO. 70 OF 2017
DISTRICTS :- MUMBAI, KOLHAPUR
AND AURANGABAD.**

1. Shri Yeshwant Maruti Patil,
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Ismil Yusuf College,
Jogeshwari,
Mumbai 400 060.
Residing at B-126/05,
Govt. Colony, Bandra East,
Mumbai 400 051.
2. Dr. Smt. Nilambari Madhusudan Paulkar
(Dr. Smt. Nilambari Vinod Kshirsagar).
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Ismil Yusuf College,
Jogeshwari,
Mumbai 400 060.
Residing at 202 A Riddhi-Siddhi Ratna Apts,
Near Jai Mandir, J.B. Nagar,
Andheri (E), Mumbai 400 059.
3. Dr. Smt. Deepali Gangadharrao Pawar,
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Elphinstone College,
Fort, Mumbai 1.
Residing at B-501, United Palms,
Behind WNS Office,
Wadala Chafuli,
Indira Nagar, Nashik.
4. Dr. Sahebrao Gulabrao Gawali,
Working as Lecturer M.E.S. (Group B)

(Collegiate Branch),
Ismil Yusuf College,
Jogeshwari,
Mumbai 400 060.
Residing at B-309/03,
Govt. Colony, Bandra East,
Mumbai 400 051.

5. Dr. Mahesh Arun Kale,
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Rajaram College,
Vidyanagar,
Kolhapur 416 004.
Residing at F-3, Shantidham Apt.,
Rajendra Nagar, Kolhapur.
6. Shri Nilesh Mohan Pathak.
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Sydenham College of Commerce and Economics,
Mumbai 400 020.
Residing at the Hotel of State Institute of
Administrative Careers,
Opp. CST Station,
Mumbai 400 001.
7. Dr. Avinash Janba Shastrakar,
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Govt. College of Arts and Science,
Aurangabad.
Residing at : C/o Shri Pritam Arjun Bhivsane.
C.L. 10/74-6,
12th Yojna, Shivaji Nagar,
Aurangabad.
8. Dr. Shekh Najoriddin Shekh Fakaroddin,
Working as Lecturer M.E.S. (Group B)
(Collegiate Branch),
Govt. College of Arts and Science,
Aurangabad.
Residing at : C/o Mr. Syyed Irfan Kareem,

Chaitanya Nagar, Professor Colony,
Near Sandipani School,
Nanded 431 605.

...APPLICANTS

VERSUS

1. The state of Maharashtra through
The Principal Secretary,
Higher Education Department,
Mantralaya, Mumbai 400 001.
2. The Director,
Higher Education, M.S.
Central Building, Pune-1.

WITH

02. ORIGINAL APPLICATION NO. 786 OF 2017

DISTRICT :- AMRAVATI

1. Dr. Pralhad Raghunath Harinkhede,
Working as Lecturer (Zoology) M.E.S. (Group B)
(Collegiate Branch),
Ismil Yusuf College,
Jogeshwari,
Mumbai 400 060.
Residing at C/o Shri Arun Kumbhar.
Room no. 15/2, 1st Floor,
LIG, NL-1/B,
Sector 10, Nerul,
Navi Mumbai 400 706.
2. Dr. Deepali Dadu Sawant.
Working as Lecturer (Botany) M.E.S. (Group B)
(Collegiate Branch),
Ismil Yusuf College,
Jogeshwari,
Mumbai 400 060.
Residing at 202/Sudhir Apartment,
Yeshwant Nagar,
Vokala Pipe Line,
Santacruz (E),
Mumbai 400 055.

3. Dr. Miss Suhasini Gopidas Gadekar,
Working as Lecturer (Zoology) M.E.S. (Group B)
(Collegiate Branch),
Govt's Vidarbha Institute of Science and Humanities,
Amravati
Address for the purposes of service;
C/o Shri V.G. Mhashakhatri.
Rampuri, Ward No. 10,
Camp Area,
Gadchiroli 442 605. ...APPLICANTS

V E R S U S

1. The state of Maharashtra through
The Principal Secretary,
Higher Education Department,
Mantralaya, Mumbai 400 001.
2. The Director,
Higher Education, M.S.
Central Building, Pune-1. ...RESPONDENTS

APPEARANCE : Shri M.R. Patil – learned Advocate
for the applicants in both the cases.

: Smt. K.S. Gaikwad – learned
Presenting Officer for the
respondents in both the cases.

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
P.N. DIXIT, MEMBER (A)**

DATE : **03.05.2018**

COMMON JUDGMENT

1. Heard Shri M.R. Patil, learned Advocate for the
applicants in both the cases and Smt. K.S. Gaikwad,

learned Presenting Officer for the respondents in both the cases.

2. Perused the written notes of arguments filed by both the sides.

3. The present applicants, who are presently working as Junior College Lecturers designated as Group 'B' Lecturers are challenging new Recruitment Rules of 2015, where under the provision of their promotion to Group 'A' Lecturer in Collegiate Branch is deleted.

The impugned provision is rule 3 of the Assistant Professor, College Librarian and College Director of Physical Education, Maharashtra Education Service, Group-A in the Government College of Arts, Commerce and Science, Government Institute, Government Institute of Forensic Science, Sydenham Institute of Management Studies and Research and Entrepreneurship Education and Government College of Education and in the Government College of Law General State Service Group-A, (Law) (recruitment) rules, 2015 (hereinafter called as the "new rules"). Vide these rules the appointment to the

above post is provided only by nomination replacing the earlier rules of 2006 where under appointment in 25% by promotion was provided. Those earlier rules were called, “the Lecturers in Government Colleges / Institutes in Maharashtra Education Service, Group-A (Collegiate Branch) (Recruitment) Rules, 2005 (hereinafter called as “the earlier rules”).

4. It is an admitted fact that the present applicants were qualified to be promoted as per the earlier rules. Some of the Lecturers from these cadres used to be promoted as per the old rules. However, now in view of the new rules the avenue of the promotion is lost. Hence, the present Original Applications.

5. The applicants submit that earlier to 2005 there were no avenues for promotion. Therefore, the lecturers in Group ‘B’ i.e. from Junior Colleges made representation to the State of Maharashtra. The State of Maharashtra sought clarification from the University Grant Commission. The said Commission vide its letter dated 15th September, 2004 clarified that the issue as to

whether Group 'A' Collegiate Branch Lecturers can be appointed either by nomination or by promotion is within the domain of the State Government and the Commission has no role to play in the same. In that view of the matter, the rules of 2006 provide for appointment on promotion to the extent of 25%. The applicants claim that as per the settled law the State as an employer is constitutionally obliged to create promotional avenues. In number of decisions of the Hon'ble Supreme Court it was held that when the employees are denied opportunity of promotion for long period excluding them from promotional avenues the Superior Courts would have jurisdiction to issue necessary directions. In the present cases the promotional avenues granted after much persuasion vide old rules of 2006 are suddenly taken away by the new rules without any reasons. There is no rational justification available to the respondents in taking away the avenue of promotion and hence it was submitted that the present original applications be allowed.

6. On the other hand, respondent Nos. 1 & 2 in affidavit in reply submitted as under: -

The UGC issued regulation under section 26 read with section 14 of University Grant Commission Act, 1956 prescribing minimum qualification for appointment of teachers. As per the Notification dated 1.6.2009 the Commission has directed that, the direct recruitment to the posts of Assistant Professors, Associate Professors and Professors in the Universities and Colleges shall be on the basis of merit through all India advertisement and selections by the duly constituted Selection Committees as per the provisions made under these Regulations to be incorporated under the Statutes / Ordinances of the concerned University. Therefore, the State Government has made fresh recruitment rules of 2015. The right to be promoted is not fundamental right. The said right can be taken away by the State. Further though the rules are notified on 13th March, 2015, the applicants have filed the present Original Applications in the month of January, 2017 and, therefore, the applications are barred by limitation. Further the channel of nomination as per the new rules is also available to the applicants. They will have to compete with other candidates from the open

market and, as such, there is no breach of any fundamental right. Further though promotional avenues are taken away, upon completion of the period of 12 years each from the date of joining of the services and another on completion of 24 years in service higher pay scales are available and, as such, there is no force in the present Original Applications. It was further averred that since the applicants did not qualify for promotion before promulgation of new rules of 2015, no promotions could be made. No fundamental rights of the applicants are in any way taken away by the new rules of 2015. On the other hand those rules are issued by the State in exercise of the powers conferred by the proviso of Article 309 of the Constitution of India and, as such, the present Original Applications deserve to be dismissed.

7. During hearing the file of the concerned respondents relating to the issue of new recruitment rules was made available for perusal to the Tribunal, as well as, to the respondents. The comments on the same were made during the oral submissions, as well as, in the written

notes of arguments by both the sides. Upon hearing both the sides, following points are arises for consideration:-

- (a) Whether the new rules of 2015 are bad in law ?
- (b) Whether the applicants are eligible for consideration for promotion ?

8. In our considered view the new rules are required to be struck down being bad in law and, therefore, the applicants and other similarly situated employees would be eligible for consideration for promotion as the new rules are being quashed and set aside by the present decision for the following reasons :

REASONS

9. In the case of **STATE OF TRIPURA AND OTHERS VS. K. K. ROY [(2004) 6 SUPREME COURSE CASES 65,** Exhibit 'A-19', page-111, it was held that right to promotion is a condition of service and avenues have to be provided for promotion. In that case even the employees have accepted the appointment with a clear knowledge that there were no avenues for promotion. In this scenario also the Hon'ble Apex Court has held that the

principle of estoppel would be inapplicable. In the present case before us however, the opportunity of being promoted granted to the Junior College Lecturers in the year 2006 is being taken away by these new rules of 2015.

10. We find three reasons for this step, from the affidavit in reply, as well as, oral arguments supplemented by written arguments. Firstly, the State claims that in view of the guidelines from the University Grant Commission (UGC), the merit is required to be maintained. Secondly, as some of the faculties, which are available at the promotional level are not available at the Junior College level. This causes difficulty in granting promotion. Last but not the least is the undeniable claim that under Article 309 of the Constitution of India, the State is empowered to change the rule and the promotion cannot be called as fundamental right.

11. First two reasons are proved to be incorrect. There is no direction from the UGC that there shall not be any quota for promotion from Junior College Lecturers to the Collegiate Branch. Even to the query specifically made by

the State to UGC, it was clarified that it would be within the domain of the State to provide for promotion and nomination and only look out of the UGC would be that the qualification for the post shall remain same.

12. The next of the reason that some of the subjects are not available at Junior College Level making it difficult for promotion of the Lecturers to the Collegiate Branch can easily be solved. Instead of abrogating entire rule of providing promotion the State under very Article 309 it can provide for promotion from the particular faculties only, wherein those subjects are available at Junior College level. Abrogating the entire rule thus, would not stand to “wednesburry test”. It would show that the State has refused to take exercise on the above line and took sweeping action of abrogating the avenue of promotion in all the subjects. In the case of **A SATYANARAYANA AND OTHERS VS. S. PURUSHOTHAM AND OTHERS [(2008) 5 SUPREME COURT CASES 416**, Exhibit ‘A-21’, page-122, the Hon’ble Supreme Court in paragraph No. 30 has observed as under: -

“30. Although mere chance of promotion is not a fundamental right, but right to be considered therefor is. In that view of the matter, any policy whereby all promotional avenues to be promoted in respect of a category of employees for all times to come cannot be nullified and the same would be hit by Article 16 of the Constitution of India.”

13. In that view of the matter, the following order : -

ORDER

(i) Both the Original Applications are hereby allowed without any order as to costs.

(ii) The provision of Rule 3 of 2015 Recruitment Rules to the extent removing in the quota for promotion to the senior collegiate branch is hereby quashed and set aside.

(iii) The State of Maharashtra is hereby directed to make suitable amendment in the light of the observations made in paragraph No. 12 above and by taking into consideration any other parameters, within a period of four months from the date of this order.

(iv) In view of disposal of O.A. No. 786/2017, the M.A. No. 356/2017 does not survive and hence the same also stands disposed of.

MEMBER (A)

VICE CHAIRMAN

PLACE : MUMBAI

DATE : 03.05.2018

O.A.NOS.70 & 786/2017-HDD