

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 983 of 2012 (DB)**

Tulsidas S/o Karandas Rangari,  
Aged about 54 years,  
Occ. Lecturer, R/o Plot No.54,  
Jetwan Housing Society,  
Khamla, Nagpur-25.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Chief Secretary,  
Department of Higher and Technical Education,  
Mantralaya, Mumbai-32.
- 2) The Director,  
Directorate of Technical Education,  
Maharashtra Rajya, Mumbai.
- 3) The Secretary,  
General Administration Department,  
Mumbai.
- 4) The Maharashtra Public Service Commission,  
through its Chairman / Secretary,
- 5) All India Council of Technical Education,  
through its Chairman office at 7<sup>th</sup> floor,  
Chanderlok Building, Janpath, New Delhi-110 001.

**Respondents.**

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**Shri P.S. Wathore, Advocate for the applicant.**

**Shri A.M. Ghogre, P.O. for the respondents.**

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**WITH**

**ORIGINAL APPLICATION No. 984 of 2012 (DB)**

Ganesh S/o late Baburao Dalvi,  
Aged about 54 years, Occ. Lecturer,  
190, Shri Ganesh nagari, Koradi,  
Road Mauza Bokhara, Nagpur-441 111.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Chief Secretary,  
Department of Higher and Technical Education,  
Mantralaya, Mumbai-32.
- 2) The Director,  
Directorate of Technical Education,  
Maharashtra Rajya, Mumbai.
- 3) The Secretary,  
General Administration Department,  
Mumbai.
- 4) The Maharashtra Public Service Commission,  
through its Chairman / Secretary,
- 5) Chairman,  
All India Council for Technical Education,  
New Delhi.

**Respondents.**

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**Shri P.S. Wathore, Advocate for the applicant.**

**Shri A.M. Ghogre, P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri Anand Karanjkar, Member (J).**

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**COMMON JUDGMENT****Per : Anand Karanjkar : Member (J).****(Delivered on this 16<sup>th</sup> day of April,2019)**

None for the applicants. Heard Shri A.M. Ghogre, learned P.O. for the respondents.

2. In both applications the applicants are appointed by the Government, as Lecturers on establishment of Government Polytechnic Collage, in the State of Maharashtra. It is submitted that before 10<sup>th</sup> September 2012 the post of the Head of the Department was available as promotional avenue to the lecturer. These posts were required to be filled in ratio 50:50 by promotion of the Lecturers and by nomination. It is grievance of the applicants that the Government of Maharashtra issued Notification on 10<sup>th</sup> September 2012 and brought the "Principal, Head of Department, Lecturer and Workshop Superintendent in Government Polytechnics and Equivalent Institutes (Recruitment) Rules, 2012" in force.

3. It is submitted that before coming in to force of these rules as per the old rules the post of the Lecturer had promotional avenue, but by bringing the 2012 Rules in force the Government has taken away the opportunity of promotion from the Lecturer. It is submission of the applicants that the Rules are framed in arbitrary manner taking away vested right of promotion from the lecturers, therefore, these

Rules are ultra Virus. It is submitted that the Rules are discriminatory unconstitutional, therefore, required to be quashed.

4. It is submitted that in exercise of power under Article 309 of the Constitution of India the State Government had no right to frame the Rules detrimental to the interests of the Lecturers after their entry in the service. According to the applicants the State Government has exercised the power disregarding the principles under Article 14 and 16 of the Constitution Of India, therefore, the exercise of jurisdiction of illegal, as it has taken away the right of a Lecturer to promotion to the post of Head of the Department. In view of the above submission it claimed that the action of the State Government is apparently illegal, therefore, these Rules be quashed.

5. We have heard submissions of the applicants and the respondents. The substantial issue involved is that whether the Government was empowered to frame the Rules taking away right of promotion from the Lecturers which earlier available? The learned P.O. has invited our attention to the judgment in case of Dr. Mrs. Tanuja Bhat v/s State of Goa & others 2005 (1) ALL MR 382. In this case same argument was examined and the Hon'ble High Court has observed as under:-

*“Since we have negative the first challenge to the Rules being malafide, we have to examine whether the challenge of malafide*

*survives against the rules being made to operate retrospectively. An authority competent to lay down qualification for appointment or promotion, is equally competent to change the qualifications, since these are part of service conditions, they can be changed retrospectively. It is not challenged before us that the Government had no power to make rules operate retrospectively. The only challenge is that the rules have malafidely made to operate retrospectively, in order to favour respondent No.3. merely because the chances of the petitioner for being appointed as Lecturer came to be adversely affected by retrospective operation of the rules, it cannot be urged that the rules be struck down on the ground of malafides.”*

6. In case of *CMD/Chairman, Bharat Sanchar Nigam Limited and others v/s Mishri Lal and others* (2011) 14 Supreme Court Cases 739, it is held that retrospective amendment of rules framed under Article 309 proviso taking away vested rights was permissible. In view of this legal position we do not see any merit in the contention of the applicants that the exercise of power while framing the rules was arbitrary and contrary to the norms framed by the Constitution. The legal position is settled that the rules framed under the proviso to Article 309 of the Constitution are legislative in character and the Constitution has conferred power on the State to decide its policy by

framing or amending the rules, therefore, the court or tribunal cannot ordinarily interfere with the policy decision.

7. In view of the above legal discussion we are of the firm view that both the original applications are devoid of merit, hence the following order.

8. Both original applications stand dismissed. No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 16/04/2019.**

\*dnk.