

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 530/2021(S.B.)

1. Jivan Wasudcorao Gore,
aged about 62 years,
Occupation: Retired (Health Assistant),
R/o Nehru Chowk, Kalamb,
Dist. Yavatmal.

2. Suresh Bhaurao Mohanapure,
aged about 59 years,
Occupation: Retired (Health Assistant),
R/o J.N. Park, Darhwa road,
behind Maroti Show room, Yavatmal.

3. Prabhakar Vitthalrao Gawande,
aged about 58 years,
Occupation: Retired (Health Assistant),
R/o Ramkrushna nagar Jamb road,
Yavatmal, Dist. Yavatmal.

4. Nandkumar Nagorao Hatgaonkar,
aged about 60 years,
Occupation: Retired (Health Assistant),
R/o Adharsh coloney,
Pandharkawada, Dist. Yavatmal.

5. Divakar Gonvindrao Borkar,
aged about 60 years,
Occupation: Retired,
R/o Retired (Health Assistant),
R/o Morya nagar, Lohara road,
Yavatmal, Dist. Yavatmal.

6. Ashok Dadarao Ghadge,
aged about 50 years,
Occupation: Service (Health Assistant),
R/o Sisodiya lay-out,
Arni road, Yavatmal, Dist. Yavatmal.

7. Prabhakar Wamanrao Thete,
aged about 63 years,
Occupation: Retired (Health Assistant),
R/o Rasa road Yavatmal, Dist. Yavatmal.

8. Jahetkhan Jainulalkhan,
aged about 61 years,
Occupation: Retired (Health Assistant),
R/o Kapse lay out Pandharkawada road,
Yavatmal, Dist. Yavatmal.

9. Dipak Dhonbaji Bende,
aged about 60 years,
Occupation: Retired (Health Assistant),
R/o Sai Mandir road Latore lay out,

Pandharkawada, Dist. Yavatmal.

Applicants.

Versus

1. The State of Maharashtra,
through it's Additional Principal Secretary,
Public Health Mantralaya, Mumbai-32
2. The Director of Health Services-2,
Old Central Building, Pune.
3. The Joint Director of Health Services,
(Malaria & Falaria, Waterbourn
Disease), Vishrantiwadi, Alandi road, Pune.
4. The Assistant Director of Health Services,
(Malaria & Falaria), Akola.
5. District Malaria Officer,
Yavamtal, Tah. & Dist. Yavatmal.

Respondents

Shri S.N.Gaikwad, Ld. Counsel for the applicants.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated: - 18th October, 2023.

JUDGMENT

Heard Shri S.N.Gaikwad, learned counsel for the
applicants and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. Case of the applicants in short is as under-

All applicants were appointed in the year 1984 on the post of Health Worker. Thereafter, all applicants are retired after completing the age of superannuation. The Government has granted first time bound promotion on 13.02.1998. Thereafter, the respondents had granted promotion to the post of Health Assistant on 14.02.2000. The applicants have received first benefit of time bound promotion in the year 1993 and second time bound promotion was granted in the year 2008. The respondents have granted third time bound promotion as per order dated 13.01.2021, but the effect was not given on the ground that they have not passed degree of B.Sc. as per notification dated 29.09.2021. Hence, the applicants approached to this Tribunal.

3. The respondents have filed the reply. The para 6 of reply is as under-

6. Recently the Government introduced scheme of third time bound promotion vide GR dated 02.03.2019 for those, who have completed 30 years continuous service, and has already got the two benefits. In pursuance of the said scheme, respondent No. 5 prepared proposal of the applicants for grant of third time bound promotion and

forwarded the same to respondent No. 3 on 08.11.2019. In the mean time new recruitment rules were came into force vide notification dated 29.09.2021, by virtue of which the qualification required for the post of Non Medical Health Officer, was B.Sc. The applicants are not having the degree of B.Sc and therefore respondent No. 3 sent communication to the State Government calling guidance, as to how the promotion is granted to the other persons when they are not having required qualification of B.Sc. which is mandatory as per recruitment rules for the post of District Malaria Officer. In response to this the State Government communicated to respondent No. 3 vide letter dated 10.05.2021 that, the Finance Department, State: Government has conveyed that, there is no provision for relaxation of educational qualification required for the post.

4. During the course of submission learned counsel for the applicant has filed communication by Joint Director, Health Services, Pune to the Additional Secretary, Health Services dated 22.09.2022. As per this letter, it was informed to the Secretary that the Notification is dated 29.09.2021 in which it is mentioned that to

grant third time bound promotion to the applicants, they should pass degree (B.Sc.), but they were entitled for third time bound promotion before the notification. They were entitled for third time bound promotion as per order dated 13.01.2021. Therefore, retrospective effect of the Notification dated 21.09.2021 cannot be given. One letter is placed on record issued by Director of Health in which General directions are given to all the heads of the Department (Health) to grant time bound promotion and report the same. The learned counsel for the applicants has submitted that Nagpur Division has granted third time bound promotion to the similarly situated employees in the Health Department as per order dated 07.09.2023. But, the respondents i.e. Akola Division has not complied the direction.

5. The applicants were entitled for third time bound promotion. The proposal / order was passed on 13.01.2021 for the same, but it was not implemented on the ground that thereafter there is Notification dated 29.09.2021. As per this Notification, the applicants should have passed B.Sc. degree for the promotional post. The letter dated 21.09.2022 of Joint Director of Health clearly shows that the Notification cannot be given retrospective effect. The material part of the letter is reproduced below-

प्रस्तुत प्रकरणी उक्त परिच्छेदास अनुलक्षण नमुद करण्यात येते की, ज्या कर्मचाऱ्यांची दि. २८.०९.२०२१ पर्यंत शासन सेवेत सलग १०,२० व ३० वर्ष अर्हताकारी सेवा पुर्ण झालेली आहे. असे कर्मचारी लाभ मंजूर करण्यासाठी संदर्भ क्र. १ व २ नुसार तत्कालिन सेवा प्रवेश नियमात विहित केलेल्या तरतुदीनुसार पात्र ठरतात. त्यामुळे शासन अधिसूचना दि. २९.०९.२०२१ अन्वये सुधारित सेवा प्रवेश नियमातील तरतुदी त्यांना लागू करणे संयुक्तिक ठरणार नाही. कारण सुधारीत शासन अधिसूचना निर्गमित होण्यापूर्वीच सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ मंजूर करण्याकरीता ते पात्र ठरतात. यास्तव सदर बाब शासनाचे निर्देशनास आपून विभागीय निवड समिती बैठक आयोजित करून प्रलंबित प्रकरणे निकाली काढण्याकरीता शासन स्तरावरून मान्यता व मार्गदर्शन मिळावे ही विनंती.

6. The applicants were already granted third time bound promotion as per order dated 13.01.2021. But, it was not implemented. In view of the letter dated 21.09.2022 of Joint Director (Health) it is clear that the applicants are entitled for third time bound promotion. Notification dated 29.01.2021 cannot be given retrospective effect. Hence, the following order is passed.

ORDER

1. The O.A. is allowed.
2. The respondents are directed to implement the order/proposal dated 13.01.2021 to grant the benefit of third time bound promotion to the applicants as stated in the order /proposal dated 13.01.2021.
3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 18/10/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 18/10/2023.
Uploaded on : 25/10/2023.