
(2002) 02 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 1114 of 1993

Bhimrao Tukaram Shinde

APPELLANT

Vs

Chief Executive Officer, Zilla Parishad and Others

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Maharashtra Animal Husbandry Department (Recruitment) Rules, 1988 — Rule 2, 4

Citation : (2002) 6 BomCR 383

Hon'ble Judges : S.A. Bobde, J; R.M. Lodha, J

Bench : Division Bench

Advocate : Vikas Mahangare, for the Appellant; D.A. Patil, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—Heard Mr. Vikas Mahangare, learned Counsel for the petitioner and Mr. D.A. Patil, learned A.G.P. for respondents.

2. The petitioner was appointed in the Veterinary Department of Government of Maharashtra as a Stockman on 9-4-1947. He was confirmed in the said post from 1-9-1956. The petitioner was promoted as Extension Officer, Animal Husbandry Department by order dated 12-12-1962. Thereafter the petitioner was transferred to Zilla Parishad, Sangli vide order dated 15-5-1964 and was posted at Walwa, under Block Development Officer, Walwa District, Sangli as Extension Officer. The petitioner was ultimately allotted Zilla Parishad, Sangli with effect from 1-3-1971. It is the petitioner's case that he has put in service as Extension Officer, Animal Husbandry in the Government Department from 1-3-1962 to 30-6-1964 and in Zilla Parishad, Sangli from 1-7-1964 till 31-5-1983. The petitioner retired from 1-6-1983 on account of superannuation and has been getting regular pension from that date. The Live Stock Development Officers in the Maharashtra Animal Husbandry Service Class II in the Animal Husbandry Department (Recruitment) Rules, 1988 were framed by the State Government in

exercise of its powers conferred by the proviso to Article 309 of the Constitution of India. The said rules are deemed to have come into force with effect from 1-4-1981. Based on the said rules, the petitioner claims that he be promoted to the post of Live Stock Development Officer, Class II with effect from 1-4-1981 and given all accrued benefit of salaries, promotions etc. till 31-5-1983 and revised pension with effect from 1-6-1983. The petitioner has also prayed that the said rules be declared to be applicable to the petitioner.

3. In response to the writ petition, the respondents have filed affidavit in reply and denied the petitioner's claim.

4. We have considered the submissions made by the learned Counsel for the parties and perused the said rules. As noted above, though the said rules were published on 22-12-1988, by virtue of Rule 2 these rules are deemed to have come into force with effect from 1-4-1981. Rule 4 provides for appointment to the post of Live Stock Development Officer by promotion and by nomination. The said Rule 4 reads thus:

"4. Appointment to the post of Live Stock Development Officer shall be made, either---

(a) by promotion of a suitable person either working under the State sector or Zilla Parishad on the basis of seniority subject to fitness from amongst the persons holding the post of Assistant in Live Stock Development Officer, Class-III, the Animal Husbandry Department or a Zilla Parishad and having continuous service for not less than 10 years in the State sector or Zilla Parishad as the case may be. Experience prior to passing the Diploma Course while in service shall be counted at the rate of one year for every two years of past service;

(b) by promotion from amongst candidates who---

(i) unless already in the service of Government are not more than 28 years of age;

(ii) posses a Bachelor's Degree in Vetenary Science or Veterinary Science and Animal Husbandry;

Provided that the age limit may be relaxed by Government on the recommendation of the commission in favour of candidates having exceptional qualification or experience or both."

5. Rule 5 makes the provision that appointment to the post of Live Stock Development Officer by promotion and by nomination shall be made in the ratio of 15:85 respectively and further that 15 per cent vacancies in the promotion quota shall be divided equally between the Assistant Live Stock Development Officers in the Animal Husbandry Department and those under the Zilla Parishads. It further provides that for initial formation of the cadre of Live Stock Development Officer, the Veterinary Officer, Extension Officers, Research

Assistants, Field Assistants, in the Government and Zilla Parishad Sectors shall be considered for appointment as Live Stock Development Officers in Maharashtra Animal Husband Service, Class-II on the basis of confidential records of the service put in by them till all the officers holding those post upto 1-4-1991 are absorbed as Live Stock Development Officers in relaxation of the ratio for promotion and nomination prescribed in this rule and also the orders regarding reservation of posts for backward classes.

6. Under Rule 4(a) the appointment to the post of Live Stock Development Officer is to be made by promotion of a suitable person from amongst the persons holding the post of Assistant in Live Stock Development Officer, Class III in the Animal Husbandry Department, Zilla Parishad on fulfilment of the conditions as prescribed therein. Under Rule 5, second proviso for initial formation of cadre of Live Stock Development Officer various categories of officers could be considered viz. the Veterinary Officer, Extension Officers, Research Assistants, Field Assistants working in the Government and Zilla Parishad. Both Rules 4 and 5, on close scrutiny give the clue that the person who is eligible for appointment to the post of Live Stock Development Officer by way of promotion must be holding the feeder post on the date of consideration of the case for promotion. We are afraid, the said rules do not contemplate giving promotion to the post of Live Stock Development Officer notionally to the Veterinary Officer, Extension Officer, Research Assistant, Field Assistant or Assistants in Live Stock Development Officer, Class III, having already superannuated. Moreover, it may be noted that the petitioner retired in the year 1983 and the present writ petition has been filed in year 1993. Though there is explanation by the petitioner for filing of writ petition belatedly and, therefore, on the ground of delay the petitioner has not disentitled himself from invoking extraordinary jurisdiction, but the fact remains that by this delay in accordance with the ratio prescribed under Rule 5 promotion has already been given to the concerned employees and if the petitioner's claim is accepted, that would not only disturb the ratio as prescribed under Rule 5, but also affect the parties who had been given promotion. Under Rule 5, appointment to the post of Live Stock Development Officer is to be made by promotion and by nomination in the ratio of 15:85 and that 15 per cent of promotion quota is further to be equally divided between the Assistant Live Stock Development Officers in the Animal Husbandry Department and those under Zilla Parishads. The petitioner has not given any facts as to on the effective date of 1-4-1981 when the rules deem to have come into force, how many posts of Live Stock Development Officers were there. Such number of vacancies were required to be filled in the ratio of 15:85 by promotion and by nomination. The petitioner has also not given seniority list of Extension Officers and, therefore, it cannot be found out whether the petitioner deserved to be considered for promotion to the post of Live Stock Development Officer even if it be assumed that the promotion could be given notionally.

7. For all these reasons, we are satisfied that no case for interference under Article 226 of the Constitution of India is made out. Writ petition is dismissed

with no order as to costs.