

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6269 OF 2004

Mr. Ashok s/o Waman Ahire
Age : 35 yrs. Occ: Service,
(Peon, Sant Hardasram Hindi
Highschool, Kanwar Nagar, Jalgaon)
R/o : As above, Jalgaon.

... Petitioner

Versus

1. Kanwarnagar Education Society,
Jalgaon. (Through Chairman)
2. Education Officer (Sec.), Z.P. Jalgaon.
3. The Deputy Director Of Education,
Nashik Region, Nashik.
4. Mr. Pramod Murlidhar Wani
Age : Major, Occ : Service,
R/o : Asoda, Tq. & Dist : Jalgaon.
5. The State of Maharashtra (Through
its Secretary, Education Dept.,
Mantralaya Mumbai.)

Copy to be served on
G.P., H.C. of Bombay,
Bench at Aurangabad.

... Respondents

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Miss Surekha Mahajan, Advocate for petitioner
Mr. L. V. Sangit, Advocate for respondent Nos. 1 and 4
Mr. S. D. Kaldate, A.G.P. for respondent Nos. 2, 3 and 5
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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 12th OCTOBER, 2015

ORAL JUDGMENT (PER A.V. NIRGUDE, J.) :-

1. The facts of this case are peculiar and can be stated as under;-

2. The petitioner, since 1989, is working as peon in the school run by respondent No.1. Some time in the month of August, 2000, the post of junior clerk in the school fell vacant. The petitioner expected that the management would consider him if found suitable for being appointed as junior clerk. But this was not done. Respondent No.2 published an advertisement on 12.8.2000. In the advertisement, the management mentioned that minimum qualification required for the post of junior clerk would be B. Com. This was apparently an erroneous statement because M.E.P.S. Rules prescribed minimum qualification for the post of junior clerk as S.S.C. or H.S.C.

3. As said above, the petitioner came with a case that he is educated up to H.S.C. and the management is aware of the same. As per the advertisement, the interviews were conducted and respondent No.4 was appointed as a junior clerk. Being aggrieved by such appointment, the petitioner went before the School Tribunal, but in vain, as his appeal was dismissed for want of jurisdiction. Even the writ petition filed against the said order was also dismissed. It is later belatedly this petition is filed challenging the appointment of respondent No.4.

4. In the reply to the petition, the management stated amongst

other things that though respondent No.4 was appointed, he was not allowed to take charge and his appointment was kept in abeyance. A letter to that effect was issued to respondent No.4 and is annexed to the reply at page 36. In view of this, it was made clear to the Court that till disposal of this petition, no new appointment would be made for the post of junior clerk. We therefore, held that in view of these circumstances, the post of junior clerk remained vacant till today.

5. Learned counsel for respondent Nos. 1 and 4 tried to inform us that respondent No.1 has appointed respondent No.4 as junior clerk and approval to such appointment was also obtained etc. We are inclined to simply ignore this statement, which came to be made orally before us mainly because such statement is not made on affidavit and such statement militates against the stand taken by the respondent No.4 earlier in the light of letter at page 36. Respondent Nos. 1 and 4 are thus not allowed to change the situation that was created vide letter at page 36. The following facts thus emerge from the above discussion.

6. The petitioner who is working as peon has the required qualification for the post of junior clerk. The post of junior clerk is vacant. The law on this subject as to whether the peon can be appointed as junior clerk, in the light of provision of M.E.P.S. Rules

and Clause III of Schedule F and Clause IV of Schedule B, is now settled.

7. The Division Bench of this Court, in the case of **Ashok Shankarrao Shinde vs. Prabodhan Shikshan Sanstha, Nagpur and others, reported in 1999 (1) Mh.L.J. 348**, held that the peon appointed in an aided school on acquiring qualification during the course of time is eligible to be promoted to the post of clerk as prescribed under M.E.P.S. Rules. It is further held that underlying idea of this provision is to encourage the staff to aim higher and achieve better. The Court further clarified that the peon would be appointed as junior clerk only if the management finds him suitable. Similar view is expressed by the Division Bench of this Court in the case of **Ramesh Shivram Khairnar vs State of Maharashtra and others, reported in 2003 (4) Mh.L.J. 470**.

8. The only solution to the problem that appears to us is as under:-

The management should be directed to consider the petitioner for the post of junior clerk and if he is not found suitable then may take recourse to the advertisement and recruitment by nomination.

9. In view of the above, writ petition deserves to be allowed in terms of following order:-

O R D E R

- I) Respondent No.1 shall consider the petitioner for the post of junior clerk before appointing any other person. The Education Officer is directed not to approve the appointment of any person other than the petitioner as junior clerk unless above procedure is followed.
- II) Writ petition is disposed of. Rule made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

rlj/

