

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5061 OF 2014

Mahavir s/o. Marotrao Bhumkar,
Age- 52 Years, Occu. Service,
R/o. Barad, Tq. Mudkhed,
District – Nanded

PETITIONER

VERSUS

1] The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai

[Copy to be served on G.P.
High Court of Bombay,
Bench at Aurangabad].

2] Divisional Commissioner,
Aurangabad Division, Aurangabad

3] The Chief Executive Officer,
Zilla Parishad, Nanded

RESPONDENTS

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Mr. Ankush N. Nagargoje, Advocate for the Petitioner
Mr. S.V.Deshmukh, Advocate for the Respondent No.3
Mr. D.V.Tele, AGP for the Respondent – State

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 05.05.2015
Pronounced on: 08.05.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith heard
with the consent of the parties.

- 3] This Writ Petition is filed with following prayers:
- A] For a writ of mandamus, order or direction in the nature of mandamus directing the respondent No.3 herein to issue the Appointment Order in favour of the petitioner on the post of Class-III/Class-IV employee in Zilla Parishad, Nanded w.e.f. May 2008 along with all consequential benefits including salary, seniority, backwages etc.
 - B] For a writ of mandamus, order or direction in the nature of mandamus directing the respondent Nos. 2 and 3 herein to take appropriate legal action against the concerned Erring Officer on account of not giving the appointment to the petitioner on the post of Class-III/Class-IV employee in Zilla Parishad, Nanded.
 - C] For a writ of mandamus, order or direction in the nature of mandamus directing the respondent No.3 herein to decide the petitioner's representation dated 07.01.2013 and 25.09.2013 and to take appropriate decision within a such stipulated period as this Hon'ble Court may deem, fit and proper.
- 4] The facts leading for filing the present Petition have been elaborately stated in the Memo of the Writ

Petition from para 3 to 17, as and when it is necessary, this Court will make reference to those facts.

5] The learned counsel appearing for the Petitioner submits that, though the Petitioner was fully qualified and his name was included in the list prepared for appointment of 10% posts from the employees of the Grampanchayat of the concerned District, his claim was negated in the Year 2004-05 and even subsequently, though other employees who have crossed the age of 45 Years were given appointment. It is submitted that, in the Year 2008, there was another selection process and in the said selection process, the Petitioner was eligible to be appointed from the 10% reservations to the employees from the Grampanchayat, however, the Petitioner was not appointed and junior employees to him were appointed. It is submitted that, the Respondents, in utter disregard to the Government Policy, not to appoint the employee who has crossed 45 Years of age on the date of inviting the applications by issuing advertisement, appointed more than 10 candidates who had crossed the age of 45 years. It is further submitted that, the Respondents appointed junior employees to the petitioner, though the Petitioner was fully

qualified and his name was included in the list of candidates from 10% reservation quota, for the selection process, which was undertaken in the Year 2008. The learned counsel appearing for the Petitioner invited our attention to the various documents placed on record to contend that, the petitioner as per the date of birth recorded in the service book, did not cross the age of 45 Years, when the selection process was undertaken in the Year 2008-2009. It is submitted that, in the cases of other employees, who are appointed, the date of birth in the service record has been taken into consideration, while considering the age of particular candidate. It is submitted that, even call letter was issued to the Petitioner, and thereafter, no any steps are taken by the respondents to appoint the petitioner. Therefore, the learned counsel appearing for the petitioner submits that, Petition may be allowed.

6] The Respondent No.3 has filed affidavit-in-reply. It is stated in the said affidavit in reply that, the Circular dated 6th April, 2005, specifically prescribed certain conditions for appointment of the Grampanchayat employees as Class-III/Class-IV employees of the Zilla

Parishad. The age limit of the employee is to be taken into consideration at the time of issuance of the advertisement / recruitment. As per the said Circular dated 6th April, 2005, 10% posts are to be reserved for the Grampanchayat Employees, who have completed full time 10 Years of service and whose age is less than 45 Years at the time of appointment, are eligible to be absorbed in said 10% quota as Class-III or Class-IV employees as per their qualifications. The said Circular contemplates preparation of seniority list of the Grampanchayat employees. In the Year 2005-06, there were total 210 vacancies with the Respondent No.3, and hence, according to 10% reservation quota as per the said Circular, 21 posts were reserved for the Grampanchayat Employees and immediately the procedure was started, and some time was consumed for collecting necessary information from the relevant Departments. In the Year 2007, the first 21 candidates from the seniority list were called out for scrutiny and verification of documents to fill up the said 21 posts. Finally, the appointment orders were issued to the 21 candidates in the Year 2008. It is stated that, the age of those candidates was within the limitation at the time of issuance of advertisement in the Year 2006, and after completing the entire process, the

appointment orders were issued in the Year 2008. As per the seniority list, the Petitioner was standing at serial No. 26, and therefore, 21 persons from serial No.1 to 25 except serial No.10, 17, 20 and 21 were appointed in the Year 2008 as per availability of vacancies and as per their qualifications and eligibility. Thereafter, the recruitment took place in the Year 2009. There were total 72 vacancies and as per the 10% quota, 8 posts were required to be filled in from the Grampanchayat employees. On 18th February, 2010, next candidates from the seniority list i.e. serial No. 20, 24, 26, 27, 28, 29, 30 and 31 were called out along with their documents including the Petitioner. The candidate at serial No.26 i.e. petitioner, and serial No.28, held to be not eligible due to their over age. The serial No.20 and 31 were absent, and hence, the Respondent No.3 proceeded with further procedure in respect of the other candidates and filled up all the 8 posts. It is stated that, when in the year 2009 recruitment took place, the age of the Petitioner was more than 45 Years, and hence, he was not eligible to be appointed with the Respondent No.3 in accordance with the said Circular, and since the Petitioner was not eligible, the persons at next serial number i.e. serial No.29 and 33 were appointed in the year 2010 whose age was less than 45.

7] The learned counsel appearing for the Respondent No.3 relying upon the affidavit in reply, and relevant Circular submits that, the Petition is devoid of merits, and same may be dismissed.

8] We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, learned counsel appearing for the Respondents, and we are of the opinion that, not only the Petitioner was denied his claim as per the seniority from 10% reservation to the Grampanchayat employees, but the Respondents have indulged in discrimination while considering the age factor. The Petitioner has demonstrated by way of filing an affidavit-in-rejoinder that, three candidates namely Digambar Vitthal Kale, Murlidhar Shankar Ghuge and Laxman Namdeo Suryawanshi were appointed pursuant to the recruitment process initiated in the Year 2008-09. The date of birth of three candidates as per the service book has been taken into consideration. The date of birth of Shri Digambar Vitthal Kale as per service book is 28.05.1962. The date of birth of Shri Murlidhar Shankar Ghuge as per service book is 19.09.1960 and the date of birth of Shri Laxman Namdeo Suryawanshi as per service book is

19.10.1966. The learned counsel appearing for the Petitioner is right in his submission that, as per the service record, the date of birth of the petitioner is 7th May, 1964, and therefore, the action of the Respondents to deny the appointment to the Petitioner on the ground that, he has crossed the age of 45 Years, was arbitrary exercise of the powers. There is also no denial that, the candidates whose names are mentioned in the seniority list at serial Nos. 27, 28, 29, 30 and 31 were called for interview and the candidates at serial Nos. 27, 28, 29 and 30 have been given appointment letters, who are junior to the Petitioner though the petitioner's name stood at serial No.26. The position which emerges on record is that, if the petitioner's date of birth as per the service record is considered like in case of other candidates, the petitioner ought to have been appointed in the year 2009 itself, since he was standing at serial No.26 in the list, and total posts to be filled in were 72, and out of 72 posts 8 posts were reserved for the Grampanchayat employees. As already observed, the candidates at serial Nos. 27, 28, 29 and 30 are appointed by the Respondents, however, the petitioner, who stands at serial No.26 in the seniority list, is denied appointment. There is no room for slightest doubt that, the respondents

have discriminated while considering the case of the petitioner vis-a-vis other employees from same category who participated in selection process of the year 2009, while considering date of birth and age factor. In case of the candidates, who are junior to the petitioner in the selection list, their date of birth maintained in the service record has been taken into consideration, however in case of petitioner said criteria is not applied.

9] Therefore, we are of the considered view that, in the recruitment process of the Year 2009, the Petitioner was standing at Serial No.26, and applying criteria of considering the date of birth in the service record like applied in case of other candidates, the Petitioner was eligible to be appointed, inasmuch as his age was below 45 years, on the date of the advertisement.

10] In that view of the matter, we direct the respondents to issue appointment order to the petitioner in Class-III post in case already vacancy is available. In case no vacancy is available, on first vacancy which would be available henceforth, the Petitioner shall be appointed without raising ground that, the Petitioner has crossed the age of 45 Years.

11] We direct the respondent No.2 to initiate an inquiry against the concerned Officers, who were holding the post of Chief Executive Officer, Zilla Parishad, Nanded, at the relevant time during the recruitment process of the Year 2004-2005 onwards, in particular the recruitment process of the year 2009, for their illegal actions to discriminate between the Petitioner and others, while taking into consideration the criteria of counting the age of 45 Years. Such inquiry to be initiated and completed as expeditiously as possible, however, within 6 months from today.

12] Rule made absolute in above terms. Petition stands disposed of accordingly.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

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DDC