

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 9978 OF 2014

SUBHARDRA MAHIPATI GHARBUDWE @ SUBHADRA NAWNATH HUMBE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...  
Advocate for Petitioner : Mr. Ramesh V. Naiknavare.  
AGP for Respondent Nos.1 to 3 : Mr. S. K. Kadam.  
Advocate for Respondent No.4 : Mr. Rajendra Godbole.

**CORAM : S.S. SHINDE & A.M. BADAR,JJ.**  
**DATE : 20th October,2015.**

**PER COURT:**

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] This writ petition is filed with the following prayers :-

“[B) Please to issue writ of Mandamus or appropriate writ or direction, in the like nature of writ directing the respondent No.3 to grant approval regarding Respondent No.4 appointed the petitioner on 1.12.2006 as Peon on compassionate ground on the place of her Husband Nawnath Gorakh Humbe.

[C] To direct the Res. No.3 to consider the claim of petitioner for appointment as peon on compassionate ground and grant an approval the services of petitioner either in respondent no.4 or other school in the same district where post is vacant in view of the G.R. dated 31.12.2002.

[D] To quash and set aside the impugned communication dated 22.08.2014 issued by the Education Officer (Secondary) ZP Osmanabad thereby rejected the proposal for grant of an approval the service of

petitioner as Peon in Res. No.4.”

3] Learned counsel for the petitioner submits that the petitioner was appointed by issuing appointment letter dated 1st December, 2006. Counsel for petitioner invited our attention to Exhibit C, page 22 of the compilation of the writ petition and submits that at the relevant time, there was clear vacant post and on clear vacancy the petitioner was appointed. The petitioner after appointment has satisfactorily completed 2 years service and therefore, even otherwise, as per the relevant provisions of the MEPS Act, the petitioner has acquired the status of deemed permanent teacher.

4] He further submits that though the respondent No.4 management has submitted proposal from time to time for approval to the services of the petitioner, however, respondent No.3 instead of granting approval, rejected the proposal on the ground that only 2 posts of Peon are admissible in view of the Government Resolution dated 23rd October, 2013. The learned counsel invited our attention to the reasons assigned in the impugned communication and submits that when the petitioner was appointed in the year 2006, there was a sanctioned post, and therefore, the position as available subsequent to the aforementioned Government Resolution cannot be taken into consideration, while considering the question of approval to the services of the petitioner. It is submitted that if the Education Officer is of the opinion that there are only two sanctioned posts of Peon after issuance of the aforementioned Government Resolution

as per the staffing pattern, it is open for the Education Officer to grant approval till said Government Resolution was issued and thereafter to declare the petitioner as surplus.

5] Learned counsel for the respondent No.4 in addition to the submissions advanced by the counsel for the petitioner invited our attention to the fact that the proposal for approval was submitted to respondent No.3 in the year 2007. Thereafter, respondent No.4 is constantly pursuing the respondent No.3 for grant of approval to the service of the petitioner. However, respondent No.3 on technical grounds has rejected the approval to the services of the petitioner.

6] Learned AGP for the State relied upon the averments in the affidavit in reply, and more particularly, to the Government Resolution dated 25<sup>th</sup> November, 2005 , so also to the Government Resolution dated 23rd October, 2013 and submits that only two sanctioned posts are there. Respondent No.4 has also appointed 3 persons as Peon. Therefore, he submits that no approval can be granted to the services of the petitioner.

7] We have heard the counsel for respective parties. With their able assistance, we have perused the pleadings in the petition, annexures thereto, the affidavit in reply, annexures thereto and the reasons assigned by the Education Officer in the impugned order and other documents placed on record by the parties. We are of the considered opinion that the petition deserves to be allowed for the reasons set out hereinbelow.

8] Admittedly, the petitioner's appointment was w.e.f. 1st December, 2006, as mentioned in the appointment letter dated 1st December, 2006. It further appears that from 1/12/2006 till 30/11/2008, the petitioner has rendered satisfactory service and by virtue of completion of 2 year's service, acquired status of deemed permanency. In that view of the matter, the petitioner has a right to assert inasmuch as, she has completed 2 years period satisfactorily. It is also not in dispute that respondent No.4 has constantly pursued the respondent from the year 2007, seeking approval to the services of the petitioner. However, no decision to that effect had been taken by respondent No.3. Reasons assigned in the impugned communication, at the most, relate back to Government Resolution dated 23rd October, 2013. However, respondent No.3 Education Officer has not considered the position of sanctioned posts or about vacancies, which was available in the year 2006 and also till 24th August, 2012. In that view of the matter, the respondent No.3 Education Officer, erred in considering the position, as on 24th August, 2012 in the light of the Government Resolution issued in the year 2013. In fact, the Education Officer, ought to have taken into consideration the position of vacancies or sanctioned posts, as available in the month of December, 2006 onwards till 24th August, 2012.

9] In that view of the matter, the impugned communication dated 22.8.2014 issued by the Education Officer (Secondary) Zilla Parishad, Osmanabad, stands quashed and set aside. Respondent No.3 is directed to

reconsider the issue of approval and find out from the record maintained by his office, so also, by respondent No.4, about the position of sanctioned vacant posts of Peon, from the year 2006 till 24th August, 2012. In case such vacancy was available, grant approval to the services of the petitioner till that period and in case if subsequently post is vacant, grant approval for the further period or it may be open for the Education Officer to declare the petitioner as surplus. Such exercise is to be done by the Education Officer, as expeditiously as possible and preferably within 10 weeks and he shall communicate said decision to the respondent Nos. 3 and 4 and the petitioner. Needless to mention that he may take assistance of respondent Nos. 3 and 4 to find out the position of sanctioned posts from the year 2006 onwards till August, 2012.

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

[A.M. BADAR, J]

[S.S. SHINDE, J]

grt/-