

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

WP NO.10135/2012

907 WRIT PETITION NO. 10135 OF 2012

VILAS VASANTRAO JAWALEKAR AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...

Advocate for Petitioners : Mr.Katneshwarkar P.R.
AGP for Respondent State:Mr. S.K.Kadam.
Mr.Pathan Hamzakhan I., Adv., for R/4
Respondent no.5 Served Through Paper publication.

...

CORAM : S.S. SHINDE & P.R. BORA, JJ.
Dated: April 13, 2015

...

PER COURT :-

1. Heard Counsel appearing for the petitioner and learned A.G.P. for respondent State.

2. Learned Counsel appearing for the petitioner invited our attention to the order issued by the Divisional Commissioner, Aurangabad Division, Aurangabad, on 4th November, 2010 (No. Outward No.10/SA.PRA/Kaksh-4/N.PA.PRA/ASTHA/KA.VI/553) about the manner in which employees of the Council are to be absorbed. Counsel for the petitioner also invited our attention to the order passed by the District Collector, Hingoli, and submits that names of the petitioners have been included in the said order for absorption in Class C category. The order passed by the Collector dated 21st November, 2013, is tendered across the Bar by the learned Counsel appearing for the petitioner and the same is taken on record.

AGP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(2)

WP NO.10135/2012

3. It is submitted that the impugned order suffers from not assigning reasons, and is also passed by the Collector on an application filed by unknown person who has no concern with the affairs of the Municipal Council. Therefore, relying on the pleadings in the petition, annexures thereof, Counsel appearing for the petitioner submits that petition deserves to be allowed.

4. On the other hand, learned A.G.P. relying upon the affidavit in reply filed by the Chief Officer on behalf of the Collector submits that, in fact, the Collector is the appointing authority for Class C posts, and before petitioners were appointed, the Chief Officer completed the action of absorption, and started paying salary and also the arrears, towards salary from the date of absorption till the order was passed by the Chief Officer, Municipal Council, Vasmat. It is submitted that the Chief Officer, without following the relevant Rules, and Government Resolution, passed the order of absorption and payment of arrears.

5. We have heard Counsel for the petitioner, learned Counsel appearing for respondent Chief Officer, Municipal Council, Vasmat, and learned A.G.P. appearing for respondent State. Upon careful perusal of the impugned order, it appears that there is a reference to the letter received from one social worker, namely, Shri Sayyad Samiyoddin and on his letter, the Collector initiated the inquiry. Upon careful perusal of the impugned order, it is clear that no any cogent and convincing reasons are assigned so as to hold that the payment made by the Chief Officer, Municipal

AGP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(3)

WP NO.10135/2012

Council, to the petitioner was illegal or was contrary to the Rules. No reliance is placed on any particular Rule and the Collector proceeded to pass the impugned order hurriedly without keeping in view the fact that the Divisional Commissioner, Aurangabad Division, Aurangabad, has passed the order for absorption of the employees of the Municipal Council in Government service in accordance with the Government Policy.

(a) In that view of the matter, in our opinion, ends of justice would be met if the impugned order is set aside and parties are relegated before the Collector so as to enable the Collector to pass fresh order. Accordingly, the impugned order is quashed and set aside. The District Collector, Hingoli, is directed to hear the Chief Officer, Municipal Council, the petitioners, and all concerned, and take appropriate decision in the light of the order passed by the Divisional Commissioner of which reference is made here-in-above and, also order dated 21st November, 2013, passed by the District Collector himself, as expeditiously as possible, preferably, within four months from today.

(b) Till the order is passed by the Collector, the salary and all other benefits which the petitioners are receiving, shall remain un-affected.

Petition stands disposed of in above terms.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

...