

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11450 OF 2012

Shri Prabhakar Laxman Dhotre

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr.N.V. Bandiwadekar for the Petitioner

Mrs.Sushma Bhende, AGP, for Respondent Nos.1 and 2

Mr.S.D. Thokade for Resp. No.3

Mr.I.M. Khairdi for Resp. Nos.4 & 5

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 6th JANUARY, 2015

P.C.:

Rule. Rule returnable forthwith. The writ petition is heard finally with the consent of the learned Counsel for the parties.

By this petition, the petitioner challenges the action of the respondent No.2 – Joint Director of Higher Education refusing to accept the prayer of the petitioner for condonation of the upper age limit in respect of his appointment in service.

The petitioner was born on 4.3.1959 and was appointed as a peon by the respondent No.4 Trust on 19.10.1992 on probation. Since the services

of the petitioner were satisfactory, the Trust passed a resolution to transfer the petitioner from the Trust to the respondent No.5 college as a peon. The respondent No.5 college is a government recognised and an aided senior college. The petitioner started working as a peon with the respondent No.5 college since 1.1.1995. In 1997, the respondent No.4 society issued an advertisement to fill the posts of non-teaching employees and the petitioner was selected and appointed on the post of peon in pursuance of the advertisement. The petitioner was appointed on probation as a peon on a post reserved for V.J. (A) category on 15.11.1997 in the regular payscale. The respondent No.5 submitted the proposal for grant of approval to the appointment of the petitioner as a peon. The Joint Director of Education granted approval to the appointment of the petitioner and also released the salary. The petitioner continued to work as a peon on regular basis till August, 2012 when the Joint Director of Higher Education declined to release the salary of the petitioner on the ground that the petitioner was over-aged by 8 months and 11 days at the time of his appointment in 1995. The petitioner has challenged the action of the respondent Joint Director of Education in refusing to release the salary of the petitioner on the ground that his appointment as a peon on 15.11.1997 was not proper.

Mr.Bandiwadekar, the learned Counsel for the petitioner, submitted that the Joint Director of Higher Education was not justified in refusing to release the salary of the petitioner in July 2012, when the petitioner had worked as a peon in the respondent No.5 college for a period of more than 15 years. It is submitted that the Joint Director of Education had considered the proposal of the petitioner in the year 1997 and after verifying the same, had granted approval to the appointment of the petitioner as a peon. It is stated that in any case, in view of the policy of the Government and in view of the Government Resolution dated 15.9.2011, it was necessary for the Joint Director of Education to relax the age criteria in favour of the petitioner, specially when the petitioner had worked as a peon with the approval of the Joint Director of Education for a period of more than 15 years. It is stated that there was no reason for the Joint Director of Education not to condone the age criteria in respect of the petitioner when the same had been condoned in respect of several other employees.

Mr.Khairdi, the learned Counsel for respondent Nos.4 and 5, supported the case of the petitioner and submitted that the petitioner was initially appointed in the year 1993 in the office of the Trust but in the year 1994, the petitioner was transferred as a peon to the respondent No.5

college. It is stated that the petitioner was not over-aged at the time of the transfer to the respondent No.5 - college. It is stated that the petitioner is a permanent employee of the respondent No.5 and the action of the Joint Director of Education in refusing to release the salary of the petitioner from July 2012 is improper.

Ms.Bhende, the learned Assistant Government Pleader for Respondent Nos.1 and 2, opposed the prayers made in the petition and submitted that the petitioner was over-aged at the time of his initial appointment in the year 1992 as well as his appointment in the year 1997. It is stated that even on 1.1.1995 when the management transferred the petitioner from the office of the Trust to the Respondent No.5 college, the age of the petitioner was more than 35 years. It is stated that the conditions of the Government Resolution dated 15.9.2011 were not fulfilled in the case of the petitioner and therefore the Joint Director of Education was justified in refusing to pay the salary of the petitioner from July, 2012.

On hearing the learned Counsel for the parties, it appears that the Joint Director of Education was not justified in refusing to release the salary of the petitioner from July 2012. The petitioner belongs to the

NT(A) category and was not over-aged at the time of his initial appointment as a peon in the Trust on 19.10.1992. At the time of his transfer from the Trust to the respondent No.5 college, the petitioner was over-aged only by a couple of months. The State Government had condoned the age criteria in respect of several other non-teaching employees but had refused to do so in respect of the petitioner. The petitioner was duly selected by the respondent No.4 society for appointment in the respondent No.5 college on 15.11.1997. The appointment of the petitioner was made in 1997 after following the due procedure for recruitment.

In view of the Government Resolution dated 15.9.2011, it was necessary for the Joint Director of Education to consider the age of the petitioner at the time of his initial appointment in the year 1992. It is incorrectly mentioned in para 6 of the affidavit in reply filed on behalf of the Regional Joint Director of Higher Education that the petitioner was over-aged even at the time of his appointment in 1992. The said statement is contrary to the statement of fact recorded in para 2 of the affidavit in reply wherein it is mentioned that the age of the petitioner was 33 years 7 months and 15 days when he was initially appointed on 19.10.1992. The case of the petitioner was a fit case for condonation of the age criteria,

specially when the age criteria was relaxed in respect of the several other non-teaching employees. Moreover, the Joint Director of Education had considered the case of the petitioner for grant of approval in the year 1997 and had rightly granted approval to the appointment of the petitioner as a peon. There was no reason for the Joint Director of Education not to release the salary of the petitioner from July, 2012 without cancelling the approval granted to the appointment of the petitioner. In the facts of the case, the action of the Joint Director of Education cannot be sustained.

Hence, for the reasons aforesaid, the writ petition is allowed in terms of prayer clause (c). The respondent Nos.1 and 2 are directed to pay the arrears of unpaid salary to the petitioner at the earliest. Rule is made absolute in the aforesaid terms. No order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)