

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH, NAGPUR.**

WRIT PETITION NO.1261 OF 2013

**Kisan Shikshan Prasarak Mandal, Tohgaon, thr its Secretary Shri
Bhaiyyaji Jairam Morey, District Chandrapur**

..vs..

**The State of Maharashtra, thr its Secretary, Department of School
Education, Mantralaya, Mumbai-32 and ors**

with

WRIT PETITION NO.4630 OF 2012

Bandu Longadge

..vs..

**The State of Maharashtra, thr its Secretary, Department of School
Education, Mantralaya, Mumbai-32 and ors**

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
.....

Court's or Judge's order

(W.P. No.1261/13)

Shri B.G. Kulkarni, counsel for the Petitioner

Shri Anand Parchure, counsel for R-5

Mrs. Ketki Joshi, AGP for R-1 to 4.

(W.P. No.4630/12)

Shri Anand Parchure, counsel for the Petitioner.

Shri B.G. Kulkarni, counsel for R-5.

CORAM

**: B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.**

DATE

: FEBRUARY 4, 2015.

1. Heard learned counsel for the
respective parties.

2. The present order is passed in the

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backdrop of earlier order dated 10.7.2012 passed by this Court in Writ Petition Nos.5594 and 5595 of 2011. Hence, at this stage, we do not find it necessary to narrate the facts in detail.

3. The case of both the writ petitions is that one Shri “Baburao Gadpalliwar” expired while in service on 21.7.2005. That vacancy was advertised on 24.7.2005, interviews were conducted on 30.7.2005 and petitioner / Shri Bandu Longadge in Writ Petition No.4630 of 2012 came to be selected and appointed. The proposal was forwarded immediately for seeking approval and approval was granted on 8.8.2012 initially.

4. Shri “Pradeep Gadpalliwar” insisted for providing him employment on compassionate ground. As per the Government

policy he was also provided employment. These two appointments resulted in filing of Writ Petition Nos.5594 and 5595 of 2011 before this Court. One petition was filed by the Management while other petition was filed by one "More", a Lower Division Clerk.

5. This Court after hearing all the concerned parties found that there was no need to cancel approval granted to Shri "More". The relevant observations in this respect are as under :-

"However, after careful perusal of the two writ petitions, their annexures, affidavits and the communication on record, we are of the opinion that there was no necessity of linking the two cases or appointments and deciding them by the impugned order. As far as Shri Gadpalliwar is concerned, he is seeking appointment on compassionate ground as a Peon and seeks to replace Longadge who is also working as Peon. We do not see how his complaint with regard to any other appointment and that too of a Lower Division Clerk could have been dealt with and considered together with that of the Peon's appointment. More over,

approval granted to Shri More need not be canceled and the same is done without hearing him. Now that aspect has been clarified and we are clear in our mind that the only grievance surviving is that in relation to the appointment of Peons and whether the appointment as made could be approved. Let the Education Officer (Secondary) take a fresh decision on the issue of approval and matter of appointment as a Peon, whether that displaces Gadpalliwar and Longadge as Peons or approval can be granted to the appointment of Gadpalliwar or not. These are only the matters which shall be decided by the Education Officer pursuant to our directions issued today. He shall decide them in the light of the material placed before us and in view of the communications addressed by him but uninfluenced by the stand of the Deputy Director of Education vide letter dated 22nd February, 2012.

Let parties appear before the Education Officer (Secondary) Chandrapur on 19th July 2012 and he shall decide the issue within a period of 8 weeks from the date of appearance of the parties. All contentions are kept open. Needless to say that, if there are two posts of Peon and one of it is reserved and if either of the persons working namely Gadpalliwar and Longadge are belonging to that category, the Education Officer shall not disturb their appointment but they be given appropriate opportunity in the peculiar facts of this case so that claims of both are protected and their appointments are approved.

Education Officer shall also issue appropriate directions with regard to payment of past salaries of both Peons and Clerk Shri More up till the date of decision. However, we direct that the salaries of Shri More, Lower Division Clerk, whose appointment has not been the subject matter of the grievance, if the same have not been disbursed and paid, be paid within a period of three weeks from today.”

6. As a result of this exercise and directions, the impugned order has been passed on 17.8.2012 by the Education Officer, Zilla Parishad, Chandrapur. He found that vacancy caused by death of “Shri Baburao Gadpalliwar” needed to be filled in by making appointment on compassionate basis. That vacancy was advertised hurriedly without previous permission and no objection of the Department. He also noted that interviews were conducted on 30.7.2005 and on very same day, the appointment orders were issued. The relevant documents pointing out the details of interview

were not submitted and hence, selection process appeared to be a farce to him.

7. He also found that in the register produced by the Management during hearing, name of “Shri Bandu Londgadge” did not figure as employee on 30.6.2006. He recorded a conclusion that thus the Education Department was misled while obtaining approval in favour of “Shri Bandu Londgadge”. It is also held that there were only four posts admissible in both these School as per Government Resolution dated 25.11.2005 and as there was no vacant post, approval to the appointment of “Shri Pradeep Gadpalliwar” could not have been given. In short, he found fault in selection process in-so-far as “Shri Bandu Longadge” is concerned. Absence of sanctioned vacancy is the reason recorded for denying approval to “Shri Pradeep Gadpalliwar”.

8. Effort of the petitioner–Management is to show that there were always three posts each of Peons and, therefore, total six posts in two schools. Our attention is invited to the statement made in the petition viz. Writ Petition No.1261 of 2013 for the said purpose.

9. Shri B.G. Kulkarni, learned counsel, has submitted that in paragraph No.3, inadvertently while mentioning year, words “2005-08” are employed while the words should have been “2005-06”. He also states that “Shri Bandu Longadge” was working in a school at “Tohgaon” while “Shri Gadpalliwar” was working in a school at “Velgaon”. The hearing was about approval to “Shri Pradeep Gadpalliwar” and hence, record of “Velgaon” school was submitted. As such there was no occasion to search for name of “Shri Bandu

Longadge” in that school.

10. Shri Anand Parchure, learned counsel, also places reliance upon earlier order of this Court and adopts argument of Shri B.G. Kulkarni, learned counsel. He submits that the petitioner “Shri Bandu Longadge” responded to open advertisement and participated in selection. He has been selected in accordance with law and had no notice that any previous permission or “No Objection” was not obtained. He submits that as everything was found in order, “Shri Bandu Longadge” was given approval on 8.8.2005.

11. Learned Assistant Government Pleader states that the impugned order records submission of all concerned and thereafter finds fault with the selection process. She submits if there was any vacancy prior to death of “Shri

Baburao Gadpalliwar”, it was not advertised. Vacancy which arose after death of “Shri Baburao Gadpalliwar” was only advertised and then the recruitment process is shown to have been completed with undue haste. According to her, in this situation, the contention that there were always three posts in both these schools or therefore, total six posts in cadre of Peons is incorrect. She also points out that the previous permission before publishing advertisement was never sought for or obtained. Hence, the impugned order, in-so-far as it rejects approval to the petitioner in Writ Petition No.4630 of 2012 does not call for any interference.

12. In Writ Petition No.1261 of 2013 she states that though “Shri Baburao Gadpalliwar” had expired, as sanctioned vacant posts were only four, no vacancy was created for providing employment on compassionate basis, as no

vacancy arose in sanctioned strength. She, therefore, justifies rejection of approval in case of respondent No.6 in Writ Petition No.1261 of 2013.

13. Shri Anand Parchure, learned counsel, as also Shri B.G. Kulkarni, learned counsel, in reply submit that “Shri Pradeep Gadpalliwar” is not appearing before this Court and is presently not on duty.

14. The earlier orders of this Court show that apart from “Shri More” only one of two present petitioners could have been accommodated. The respective Counsel for the petitioners now are attempting to urge that this Court then found that “Shri Bandu Longadge” and “Shri Pradeep Gadpalliwar”, both could have been accommodated in the cadre of Peon. However, everything turns upon staff

justification for the year 2005-06. The impugned order specifically observes that as per Government Resolution dated 25.11.2005 only four Group-D posts were available in both the schools. We have already noted above that the Management advertised vacancy which arose after death of “Shri Baburao Gadpalliwar”. No other vacancy was advertised. It is, therefore, obvious that if this stand of the Management or “Shri Bandu Longadge” is to be accepted, it implies that before death of “Shri Baburao Gadpalliwar”, there was at least one more vacancy.

15. The Management has not produced before this Court any material to show that in Year 2005-06 there were two such vacancies available. The stand in paragraph No.3 of its writ petition even if is presumed to be correct, the documents filed with the writ petition do

not show six vacancies together in both these schools for Years 2005-06 and 2006-07.

16. The Management as also other petitioner “Shri Bandu Longadge” claim that “Shri Bandu Longadge” is till continuing in employment. Respondent No.6 – “Shri Pradeep Gadpalliwar” who was given employment on compassionate basis, is claimed to be not reporting for work. He has not even appeared before this Court.

17. In this situation, the question before this Court is whether in the Year 2005, had the Management applied for grant of no objection to advertise the vacancy caused on account of death of “Shri Baburao Gadpalliwar”, the Education Department was in a position to give the same. Answer to this question depends on finding out whether in that year any surplus

Peon was available for sending to the Management against the available vacancy. The material on record does not show any such application of mind by the Education Officer. Other relevant factor may be claim for compassionate employment by Shri "Pradeep Gadpalliwar".

18. As the petitioner – "Shri Bandu Longadge" *prima facie* does not appear to be at fault and respondent No.6 was provided employment on compassionate basis, we find it proper to grant the said petitioner and respondent No.6 one more opportunity. We, therefore, direct the Management to produce all relevant records before respondent No.4 - The Education Officer to substantiate their contentions about available vacancies. The Education Officer shall peruse the same and thereafter find out whether surplus Class-IV

employees were available in Year-2005 for forwarding them to the petitioner – Management in Writ Petition No.1261 of 2013. Need of providing compassionate service to Shri “Pradeep Gadpalliwar” shall also be evaluated. After taking into account all these factors, a fresh order be passed at the earliest.

19. We direct the parties to appear before respondent No.4 – The Education Officer (Secondary), Zilla Parishad, Chandrapur for this exercise on **4.3.2015** with all relevant records. The Education Officer (Secondary), Chandrapur shall attempt to pass fresh orders by **15.5.2015**. The writ petition are thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

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