

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

WRIT PETITION NO.7357 OF 2014

Ramling Janardan Nagtilak
Age- 40 Occu:-Service,
R/o. Yedshi,
Tq. Dist. Osmanabad.

PETITIONER

VERSUS

1. The State of Maharashtra
School Education and Sports Department
(Through its Secretary)
(Copy to be served on the Govt.Pleader,
High Court – Aurangabad)
2. Marathwada Bahuudeshhaia Sevabhavi
Sanstha, Kumbhefal, Tq. Paranda,
Dist. Osmanabad
(Through its Secretary)
3. Dr. Shamprasad Mukherjee Madhyamik
Vidhayalaya, Kumbhefal, Tq.Paranda,
Dist. Osmanabad
(Through the Head Master)
4. The Education Officer
(Secondary)
Zilla Parishad Osmanabad,
Tq. Dist. Osmanabad.

RESPONDENTS

...

Mr.V.C.Dharurkar, Advocate for the petitioner
Mr.A.G.Magre, AGP for respondent Nos.1 & 4
Mr.B.K.Patil, Advocate h/f. Mr. S.R.Madhekar,
Advocate for respondent nos. 2 and 3.

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 15.07.2016
Pronounced on : 02.08.2016

JUDGMENT: (Per S.S.Shinde, J.):

Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. It is the case of the petitioner that on 20.06.2005 the petitioner was appointed to the post of 'Peon' with respondent no. 3 school. The appointment was made after following due procedure. It was on permanent, clear, vacant and sanctioned post. On 17.12.2007, the proposal for approval to the petitioner's appointment was sent by respondent no.3 to respondent no.4. The hearing was conducted in the office of respondent no.4 about grant of approval to the petitioner's appointment on 29.06.2009

and 18.08.2009. On 01.10.2009, respondent no.4 was pleased to refuse to grant approval to the petitioner's appointment citing Government Resolution dated 25.11.2005. The petitioner as well as the respondent no.3 addressed representations dated 23.07.2012, 10.07.2013, 26.06.2014, 17.12.2012 and 26.08.2013, stating that the reliance on the Government Resolution dated 25.11.2005 for consideration of approval to the petitioner's appointment was misplaced, since the petitioner's appointment was much prior to the issuance of Government Resolution dated 25.11.2005 and the Government Resolution cannot be made applicable retrospectively. On 14.07.2014, respondent no.4 is still pleased to reiterate that the petitioner is not entitled for approval to his appointment as Peon. Hence this Writ Petition.

4. The learned counsel appearing for the petitioner submits that the petitioner's

appointment is dated 20.06.2005. Therefore, the Government Resolution dated 25.11.2005 issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai cannot be made applicable with retrospective effect. It is further submitted that the petitioner's appointment was on clear vacant and sanctioned post at the relevant time. It is further submitted that the petitioner is continuously rendering the services in respondent institution since his appointment and therefore, it cannot be said that there is delay in filing the proposal for approval by the management. It is submitted that there is continuing cause of action for the petitioner, and therefore, the legitimate claim of the petitioner cannot be turned down on the technical ground that the proposal submitted by the respondent management for approval to the appointment of the petitioner suffers from the delay or

laches. It is submitted that the reasons given in the impugned communication by respondent no.4 in view of the Government Resolution dated 25.11.2005, only two posts of Peon are admissible to the respondents School and already three persons are appointed and also as per the Government Resolution dated 23.10.2013, the only one post of the peon is admissible to the respondent school, cannot sustain since the said Government Resolutions cannot be made applicable with retrospective effect to the case of the petitioner, since the petitioner's appointment was on 11.06.2005. Therefore, the learned counsel appearing for the petitioner submits that the Petition deserves consideration.

5. On the other hand, the learned AGP appearing for the respondent – State relying upon the averments in the affidavit-in-reply submits that the aforesaid two Government

Resolutions are very much applicable to the facts of the petitioner's case. It is submitted that if the petitioner was appointed in the month of June 2005, in that case the respondent management ought to have submitted proposal for approval to his appointment when the proposal of other three employees was submitted for approval of their appointments dated 28.10.2005. It is submitted that as per the Government Resolution dated 25.11.2005, there are three posts of peons admissible to the respondent management, however, already three employees have been appointed and the approval is granted to their appointment by respondent no.4. It is submitted that first time the management submitted proposal for approval in the year 2009 and thereafter in the year 2014. There is inordinate delay and laches which are not explained by the petitioner. Respondent no.3 school became eligible for

admissible grants for 8th standard to 10th standard from September 2006 and the petitioner is claiming salary and arrears from 2005 from the Government.

6. We have considered the submissions of the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent – State. With their able assistance, perused the pleadings and grounds taken therein, annexures thereto, reply filed by respondent no.4. Upon perusal of the copy of the appointment letter placed on record at Exhibit-B Page-13 of the compilation of the Writ Petition, it is mentioned in clause-1 of the said appointment letter that in pursuance of the application filed by the petitioner on 11.06.2005, he has been appointed to the post of Peon with effect from 20.06.2005 or from the date on which the petitioner joined the post of Peon in the pay scale of Rs.2550-3200/-. However, in clause 2 there

are blank spaces and the period of such appointment is not mentioned. There are also blank spaces in clause 3 of the said letter. In the footnote also, there are blank spaces. If the contention of the petitioner is accepted, the petitioner was appointed on 20.06.2005 and he has joined the services on the same day, in that case certainly provision of the Government Resolution referred herein above cannot be made applicable with retrospective effect to the case of the petitioner. However, the respondent management will have to produce the relevant record before respondent no.4 to show that as a matter of fact the petitioner's appointment was on 20.06.2005. From the documents placed on record, it appears that at least from 17.12.2007, the respondent management has written letter to respondent no.4, requesting therein to grant approval to the services of the petitioner.

The petitioner has placed on record the copies of letters written by respondent no.3 to respondent no.4 stating therein that the petitioner is in continuous service and the approval should be granted to his appointment. Neither the respondent management has produced original record before respondent no.4, nor respondent no.4 has applied his mind to the record maintained by the respondent management.

7. In that view of the matter, the impugned orders / communications dated 01.10.2009 and 14.07.2014 passed by respondent no.4 stand quashed and set aside. Respondent no.4 is directed to reconsider the case of the petitioner for approval to his appointment, afresh. Respondent no.3 is directed to produce the original record before respondent no.4 within 4 weeks from today. Respondent no.4 to look into the original record and find out when the

petitioner was appointed, on the date of his appointment how many posts were vacant, whether the petitioner was fulfilling the requisite qualification for the appointment to the post of Peon at the relevant time, etc. Respondent no. 4 is directed to take decision afresh on the proposal submitted by respondent no.3 for the approval to the appointment of the petitioner to the post of Peon. Respondent nos.2 and 3 and the petitioner to cause appearance before the Education Officer on 25.07.2016. Respondent nos. 2 and 3 to produce original record in relation to the appointment of the petitioner before respondent no.4. Respondent no.4 can take decision on 25.07.2016 or may fix one more date for hearing the petitioner and respondent nos. 2 and 3, and take the decision. However, the entire exercise to be completed as expeditiously as possible, however within 14 weeks from today.

8. The rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly. No costs.

Sd/-

[SANGITRAO S.PATIL]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE