

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 9113 OF 2015**

JAYWANTRAO ANNASAHEB MULAY AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Kakade Amol N.

AGP for Respondent/State : Mr. S.B. Yawalkar

Advocate for Respondent nos. 4 and 5: Mr.D.R.

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CORAM : S.S. SHINDE & SANGITRAO S. PATIL, JJ.**Dated: April 16, 2016**

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PER COURT :-

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. This Petition takes exception to the impugned communication/order dated 13th January, 2015, thereby refusing to grant approval to the services of the petitioners as peons. It is the case of the petitioners that Respondent No.5 applied to the Deputy Director of Education, Pune, seeking permission to fill in the posts of peons. The said authority granted permission in favour

of Respondent Nos. 4 and 5 to fill in three posts of peons from open category. It is further the case of the petitioners that the Assistant Commissioner, Nashik Division Nashik has verified the roster of Respondent – Management and as per the said verification, three posts from open category were vacant. On 15th June, 2013, Respondent – Management issued advertisement in daily “Lokmat” inviting applications for three posts of peons in Respondent No.4 – College. On 10th July, 2013, the selection committee called 53 candidates for interviews and after following due procedure recommended the names of eligible candidates for appointments. On 11th July, 2013, the Respondent – management issued appointment orders to petitioners on the post of peons, and the petitioners joined their services w.e.f. 11th July, 2013. The Respondent – management submitted detailed proposal with all relevant record with Respondent No.2, seeking approval to the services of the petitioners. Since, there was no decision taken by the said authority on the proposal submitted by the Management, the petitioners filed Writ Petition No. 9900 of 2013 (Jaywantrao Annasaheb Mulay and others V/s The State of Maharashtra and others)

before the High Court. The High Court, by order dated 3rd February, 2014 decided the said Writ Petition thereby issuing directions to Respondent No.3 to decide the said proposal within a period of four months. In spite of specific directions given by the High Court to decide the proposal within stipulated time, Respondent No.3 did not take decision on the said proposal, therefore, the petitioners filed Contempt Petition before the High Court. Thereafter, by the impugned communication/order dated 13th January, 2015, the proposal submitted by Respondent-Management is rejected. Hence this Petition.

3. The learned counsel appearing for the petitioners invited our attention to the various documents placed on record, and submits that the selection of the petitioners is in accordance with procedure established, after following relevant rules, after advertising the posts and after conducting the proper selection process. Therefore, on completion of two years satisfactory service, it was expected from Respondent No.3 that, he will accord approval to the services of the petitioners. It is submitted that, only

reason given by Respondent No.3 for not granting approval is, that there is backlog of one post of peon to be filled in from S.C. category. He submits that Respondent Nos. 4 and 5 have filed affidavit in reply and made it clear that, as a matter of fact, there exists no backlog, however, undertaking is also filed by Respondent No.5 to the effect that, on the vacant post of peon, Respondent Nos.4 and 5 will appoint the candidate from S.C. category. The learned counsel appearing for the petitioners further invited our attention to the letter written by Respondent No.5 to Respondent No.2 at Exhibit 'R-1' Page 49, and submits that, inspite of filing such application seeking permission of Respondent No.3 to make appointments of the peons from S.C. category, still the said authority has not replied anything to Respondent No.5. The learned counsel appearing for the petitioners, therefore, submits that, the Petition deserves to be allowed.

4. The learned A.G.P. appearing for Respondent Nos. 1 to 3, relying upon the averments made in the affidavit in reply, submits that when the permission was sought from Respondent No.3, it was not made clear

to Respondent No.3 that, there exists backlog and therefore, the permission to fill in three posts of peons are granted. Therefore, he submits that, the Petition may be rejected.

5. The learned counsel appearing for Respondent Nos. 4 and 5 submits that, already there is one class-IV post of peon is vacant and Respondent nos. 4 and 5 are ready to fill up the said post from S.C. category.

6. We have considered the submissions advanced by the learned counsel appearing for the petitioners, the learned A.G.P. appearing for Respondent Nos. 1 to 3 and the learned counsel appearing for Respondent Nos.4 and 5. Upon careful perusal of the copies of the documents placed on record, there is no room for doubt that, the posts were advertised, selection process was conducted and thereafter, considering the eligibility of the petitioners appointment letters were issued and the petitioners have been appointed on the post of peons. It is not in dispute that, after appointments, the petitioners have completed their two years service and there is no adverse remarks

against them during the said period. In that view of the matter, and the fact that, the posts were advertised after seeking permission from Respondent No.3 and pursuant to the proper selection process the petitioners have been appointed and completed two years satisfactory service, we are inclined to allow this Petition. However, as undertaken by Respondent Nos. 4 and 5, they are bound to appoint the candidate from S.C. category on the vacant class-IV post of peon. In the light of above, we pass the following order :-

ORDER

(i) The Writ Petition is allowed.

(ii) The impugned communication/order dated 13th January, 2015 is set aside. Respondent No.3 is directed to grant approval to the appointments of the petitioners, subject to formal verification, as expeditiously as possible, and preferably within six weeks from today.

7. Rule made absolute in the above terms. The Petition stands disposed of

accordingly.

8. The parties to act upon an
authenticated copy of this order.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)

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