

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

WRIT PETITION NO. 9167 OF 2015

SNEHA MOHANRAO PAWAR. **... PETITIONER.**

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS. **... RESPONDENTS.**

...

Advocate for Petitioner : Mr. Munde Sambhaji G.
AGP for Respondents/State: Mr.U.H. Bhogale.
Advocate for Respondents : Mr.S.G. Chapalgaonkar for R/9;
Mr.Jagatkar Amol Anantrao for R/10 and 11, Mr.K.B.
Jadhavar for R/13. R/12 served.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: February 15, 2016.

PER COURT :-

1. Heard learned Counsel for the petitioner. He submits that the petitioner was duly selected. Petitioner's name was forwarded to respondent – Zilla Parishad in the month of June, 2013. In pursuance to recommendation by the respondent – authorities, it was incumbent upon the respondents No.10 and 11 to allow the petitioner to join the

services. He further submits that, though it is stated by the respondents 10 and 11 that, in pursuance to the recommendations by respondents 10 and 11, all such candidates were asked to appear before the authority with relevant documents, said communication was not addressed to the petitioner. The petitioner had never received such a letter from respondents No.10 and 11. It is submitted that, the petitioner waited for a considerable period and on 19th August, 2015, addressed a letter to the Education Officer, Zilla Parishad, Aurangabad and requested for appointment on the post of Shikshan Sevak. However, her request was rejected. Therefore, the petitioner was constrained to approach this Court by way of filing the present writ petition.

2. Learned Counsel for petitioner submits that, in similar set of facts, the High Court in case of **Anil Barmu Patil Vs State of Goa and another**¹ has taken a view that, if the candidate is selected after following due procedure, it cannot be said that the petitioner has no right to seek indulgence of High Court in extraordinary writ jurisdiction

¹ 2014(6) Mh.L.J. 148;

for enforcing his legal right. The learned Counsel for the petitioner invited our attention to the reported judgment of Bombay High Court, Bench at Nagpur in case of ***Bhavikkumar Shriramji Tandale and Ors. Vs. State of Maharashtra and Ors.***² and submitted that the petition deserves to be allowed. He further submits that, if it is not possible for the respondents No.10 and 11 to appoint the petitioner immediately, at least, on next vacancy from VJ-A, the petitioner's case may be considered for appointment on the post of Shikshan Sevak. At the cost of repetition, learned Counsel for the petitioner submits that, the petitioner though duly selected, has been deprived by respondents No.10 and 11 by not appointing her as Shikshan Sevak.

3. On the other hand, learned Counsel for respondents No.10 and 11 invited our attention to the averments in the affidavit-in-reply. He submitted that respondent N.6 forwarded list of 41 candidates (36 candidates for Zilla Parishad and 5 candidates for Aurangabad Municipal Corporation) to answering respondents and directed to issue

2 2013(2) Mh.L.J. 226;

appointment order to the candidates on the same day after completion of document verification. Respondents 10 and 11 communicated to the candidates on 4.1.2014 to remain present along with relevant and required documents on 8.1.2014. Out of 36 candidates, 31 candidates were present on 8th January, 2014. Respondent No.11 issued appointment order to the candidates who were present on the date after verification of their documents. The learned Counsel invited our attention to the copy of the call letter dated 4th January, 2014 asking the candidates to remain present for verification of documents on 8.1.2014 and the signatures of the candidates against their names in token of receipt of letter dated 4th January, 2014. It is submitted that the petitioner belongs to VJ-A category. Now there is no post vacant in VJ-A reserved category. All the candidates including petitioner were aware about the list which was forwarded by Director of Education to Zilla Parishad, Aurangabad. So the candidates were in touch with Pune office as well as office of respondents. He submitted that, the petitioner kept quiet for one and half year. Petitioner deliberately suppressed the facts and has not offered any explanation as to what was the reason for

not appearing either before the Officer on 8th January, 2014 or even thereafter for one and half year. The sum and substance of the submissions of the learned Counsel for respondents No.10 and 11 is that, since the candidates including VJ-A category are appointed, there is no vacancy and therefore, the prayer of the petitioner may not be considered.

It is further submitted that waiting list can operate, at the most, for one year. In the present case, on 8th January, 2014, out of 36 candidates, 31 were given appointments. Even, if the limitation to appoint selected candidate is reckoned from 8th January, 2014, the petitioner ought to have approached the respondents during that period. However, belatedly in the month of August, 2015, the petitioner filed an application / representation to respondents No.10 and 11 and at the relevant time, there was no vacancy from VJ-A category.

4. We have heard learned Counsel for the petitioner, learned AGP appearing for the State and State authorities and learned Counsel for respondents No.10 and 11. With

their able assistance, perused the pleadings in the petition, annexures thereto, averments in the reply filed by respondents No.10 and 11 and also the judgments referred herein above.

5. Upon careful perusal of the material placed on record, nothing is brought to the notice of this Court as to what steps were taken by the petitioner from the month of June, 2013, when the petitioner was selected and her name was recommended for appointment, till August, 2015 for redressal of her grievance by approaching the respondents. For the first time in the month of August, 2015, representation / application was filed with the respondents No.10 and 11, which was a belated attempt after two years from her selection. Whether the petitioner received notice / letter dated 4th January, 2014 like other 36 candidates or not, is a question of fact and in view of the fact that, assertions are made by the respondents No.10 and 11 in the affidavit-in-reply that, the communications / notices were sent to all the candidates whose names have been recommended, we find it difficult to accept contention of the petitioner that, no notice / letter was sent to the petitioner

so as to appear before respondents / authorities on 8th January, 2014. We would have appreciated the contention of the petitioner. However, belated attempt of the petitioner, after lapse of more than one and half year from 8th January, 2014 to approach the respondents and to file this petition cannot be countenanced. The petitioner herself was not diligent to pursue the respondents. No material is placed on record to show that, from June, 2013 till August, 2015 the petitioner had made any efforts to get appointment pursuant to her selection and recommendation of her name in June, 2013. The judgments cited herein above by the learned Counsel for the petitioner are of no assistance to the petitioner in view of the fact that, the time gap between the date on which name of the petitioner was recommended and the first time attempt is made in the month of August, 2015 by the petitioner to approach the respondents.

6. In the light of above, we are unable to persuade ourselves to issue any mandatory directions to the respondents to appoint the petitioner on the post of Shikshan Sevak. As already observed, learned Counsel for the respondents No.10 and 11 has submitted that, since

waiting list is to operate for one year, we are also unable to give any directions to the respondents to appoint the petitioner on the next vacant post for VJ-A category.

7. For the reasons aforesaid, we are not inclined to entertain the petition. Petition stands rejected.

(P.R. BORA, J.)

(S.S. SHINDE, J.)