

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9211 OF 2015

SANTOSH VASANTRAO BAHIRE
AND OTHERS

PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

RESPONDENTS

Mr.S.M.Vibhute, Advocate for the petitioners.

Mr.P.G.Borade, AGP for the respondent/State.

Mr.P.P.More, Advocate for respondent No.5.

Mr.V.A.Sarvade h/f Mr.Nikhil S. Tekale, Advocate for respondent Nos.
6 and 7.

Mr.S.T.Veer, Advocate for respondent Nos. 8 and 9.

(CORAM : S.S. SHINDE AND
RAVINDRA V. GHUGE, JJ.)

DATE : 20/01/2016

PER COURT :

1. Heard.

2. This petition is filed by the petitioners praying in prayer clauses
B and D as under :-

*“B. The respondent No.6 and 7 may kindly be directed to allow
the petitioner to sign on muster of the employees of Wadvani
Nagarpanchayat Dist.Beed and make payment of salary of the
petitioner regularly and they may kindly be restrained from
refusing to work the petitioner on their respective posts as per*

their lawful appointments made by the Grampanchayat Wadvani.

D. The respondent No.6 and 7 may kindly be directed to forward the names of the petitioners to respondent No.3 as employees of the Wadvani Nagarpanchayat for further steps in respect of services of the petitioner and respondent No.3 may kindly be directed to take steps in respect of the services of the petitioner in Wadvani Nagarpanchayat alongwith the names of the employees already forwarded by the respondent No.6 to respondent No.3.”

3. Learned counsel appearing for the petitioners invited our attention to the letters of appointment of the petitioners and also the contents of the General Body Meeting by which the petitioners who were appointed on the respective posts which are mentioned in the appointment letters, have been confirmed. It is submitted that though the petitioners are appointed by following the due procedure as contemplated under the provisions of the Village Panchayat Act and thereafter their services have been confirmed by the Gramsabha, the petitioners are not allowed to sign the muster rolls. It is submitted that respondent Nos. 6 and 7 may be directed to submit the information to the other respondents in particular respondent No.3 about the appointments of the petitioners and confirming their

appointments.

4. Learned counsel for the petitioners invited our attention to the provisions of Section 60 and 61 of the said Act and also the reported judgment of the Bombay High Court, bench at Aurangabad in the case of Sunil Sayanna Kotgire and others Vs. The State of Maharashtra and others, 2015(5) ALL MR 174 and in particular paragraph nos. 13 and 16 thereof. It is prayed that petition deserves to be allowed.

5. Learned counsel appearing for the respondents vehemently opposed the submissions advanced by the learned counsel appearing for the petitioners and submits that the petition may be rejected.

6. We have given careful consideration to the submissions of the learned counsel appearing for the petitioners and learned counsel appearing for the respective respondents.

7. Some undisputed facts which are stated by the learned counsel for the petitioners are that the Nagar Panchayat, Wadvani came into existence on 04/04/2015. The appointments of the petitioners are made on 27/01/2015. If the contents of the said appointment letters

are perused carefully, it reveals that those appointments are on consolidated pay of Rs.3,000/- per month and on purely temporary basis on the respective posts, which are mentioned in the appointment letters. Upon perusal of the documents placed on record, nothing is brought to the notice of this Court that as a matter of fact, the posts on which the petitioners are appointed, were regular / sanctioned / approved posts by respondent Nos. 1 to 6.

8. When the learned counsel appearing for the petitioners was confronted with the query as to whether any advertisement was issued so as to set in motion the process of appointment for the posts which are mentioned in the appointment letters, it is the submission of the learned counsel appearing for the petitioners that no such procedure is contemplated under the provisions of the said Act and the Rules thereunder.

9. Though the learned counsel appearing for the petitioners has placed reliance on the case of Sunil Kotgire (supra), in the said case, petitioner no.1 therein was nominated in Gram Panchayat, Taroda as a Junior Clerk on 30/12/1991 and promoted as a Senior Clerk on 20/07/2001. Petitioner No.2 therein was appointed as a Junior Clerk to the Gram Panchayat Taroda on 14/08/1988 and was promoted as

Senior Clerk on 26/02/2009.

10. In the present case, as already observed, the petitioners were appointed on temporary basis by the Sarpanch of the concerned Gram Panchayat on 27/01/2015 and as contended by the learned counsel for the petitioners, their services were confirmed by the Gramsabha on 31/03/2015. Therefore, the facts of the present case are altogether different in as much as the appointments of the petitioners were on 27/01/2015 and as already observed confirmed by Gramsabha on 31/03/2015.

11. We find it strange that Sarpanch of the Gram Panchayat has appointed the petitioners. No advertisement published. No applications were invited. This is impermissible in public employment.

12. Upon considering the case in its entirety, in our prima facie opinion, keeping in view the developments in respect of the constitution of Wadvani Nagar Parishad, the appointments of the petitioners appears to have been made on 27/01/2015 and within 2½ months, those are confirmed as contended by the learned counsel appearing for the petitioners. In our opinion, the fact of

respondent Nos. 8 and 9, appointing the petitioners without advertising the posts and further confirming their appointments by Gramsabha within the span of 2½ months, cannot be countenanced and such procedure followed by respondent Nos. 8 and 9 cannot be said to be proper and same is also against the mandate of the Supreme Court judgment in the case of Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors., 2006(4) SCC 44.

13. Apart from what has been observed hereinabove, the petition raises disputed question of fact and therefore for the reasons aforesaid, we are not inclined to invoke extra ordinary writ jurisdiction and to exercise the discretion in favour of the petitioners.

14. For the reasons aforesaid, petition sans merit and hence stands rejected.

(RAVINDRA V. GHUGE, J.)

(S.S. SHINDE, J.)