

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

WRIT PETITION NO.10218 OF 2015

Popat Shrirang Khandagale,
Age 45 years, Occu. Service,
R/o.
Tq. Shrigonda, Dist. Ahmednagar.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Secretary, Higher Education,
Mantralaya, Mubai 32
2. The Education Officer (Secondary),
Ahmednagar, Zilla Parishad.

...RESPONDENTS

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Mr. Suresh M.Kulkarni, Advocate for the
petitioner.

Mr. S.D.Kaldate, AGP for respondents.

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WRIT PETITION NO.10220 OF 2015

Ashok s/o Bajirao Alekar,
Age: 40 years, Occu. Service,
r/o.
Tq. Shrigonda, Dist. Ahmednagar.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Secretary, Higher Education,
Mantralaya, Mubai 32

2. The Education Officer (Secondary),
Ahmednagar, Zilla Parishad.

...RESPONDENTS

...

Mr. Suresh M.Kulkarni, Advocate for the
petitioner.

Mr. S.B.Yawalkar, AGP for respondents.

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CORAM: S.S.SHINDE

AND

RAVINDRA V.GHUGE, JJ.

DATE : February 2nd, 2016

ORAL JUDGMENT: (*PER S. S. SHINDE, J.*)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of the learned Counsel for the parties.

2. This petition takes exception to the order dated 15th March, 2014, passed by respondent no.2 refusing to grant approval to the promotion of the petitioners in the post of Clerk. Learned Counsel appearing for the petitioner invited our attention to the provisions of Government Resolution dated 15th April, 1991, issued by the General Administration Department, Government of Maharashtra, and in particular

clause (1) thereof, and submits that out of available posts, 25 per cent posts are to be filled in by promotion and remaining 75 per cent posts are to be filled in by nomination. Keeping in view the said Government Resolution, the respondent management promoted the petitioners on the post of Junior Clerk, however, without considering the provisions in the said Government Resolution, by the impugned communication, unsustainable reason is assigned that, since the posts are not filled in by nomination, therefore, approval cannot be granted. It is submitted that the reasons given in the reply filed by respondent nos. 1 and 2 are totally different than the reasons assigned in the impugned communication, while rejecting the proposal, seeking approval to the promotion of the petitioners on the post of Junior Clerk. Therefore, learned Counsel appearing for the petitioner submits that the petition deserves to be allowed.

3. On the other hand, learned A.G.P. appearing for respondent nos. 1 and 2, relying upon the affidavit in reply and Annexures thereto, submits that since the respondent management has not followed the Roster Point, and also appointments are made by promotion, which is not permissible, and therefore, petitions may be rejected.

4. We have given due consideration to the submissions made on behalf of the learned Counsel appearing for the petitioner and learned A.G.P. With their able assistance, perused the contents of the petition, annexures thereto and in particular, Government Resolution dated 15th April, 1991, issued by the General Administration Department. Relevant portion of the said Government Resolution, necessary for the purpose of deciding this petition, reads thus:

"१) एस.एस.सी. अथवा तत्सम परीक्षा उत्तीर्ण झालेल्या आणि चतुर्थश्रेणीत तीन वर्ष सलग सेवा पुर्ण झालेल्या कर्मचाऱ्याला तृतीय श्रेणीतील त्या विशिष्ट वर्षी रिक्त झालेल्या लिपिक-नि-टंकलेखक पदांच्या २५% पदांवर पदोन्नती देण्यात यावी. "

5. Admittedly, the respondent management has filled in five posts of Junior Clerk by nomination. Counsel appearing for the petitioner is right in his submission that out of eight posts available, the two posts are required to be filled in by nomination. It is also relevant to mentioned that the petitioner in Writ Petition No.10218/2015 is from VJNT category whereas petitioner in Writ Petition No.10020/2015 is from OBC category. In that view of the matter, in our considered view, the ends of justice would be met if the impugned communication is

quashed and set aside and respondent no.2 is directed to reconsider the proposal for approval of the petitioners' promotion as a Junior Clerk. In the light of above, we pass following order.

ORDER

A) The impugned communications, in both the petitions, dated 15th March, 2014, issued by respondent no.2, to the Secretary, Shri Chatrapati Shivaji Shikshan Sanstha, Srigonda Factory, Taluka Shrigonda, district Ahmednagar, stand quashed and set aside. Respondent no.2 is directed to reconsider the proposal for approval of the petitioners' promotion as a Junior Clerk keeping in view the relevant Government Resolution, which is referred here-in-above, and also the fact that, both the petitioners belong to reserved category, as mentioned here-in-above, as expeditiously as possible, however, within eight weeks from today.

B) The petitions are partly allowed.

C) Rule made absolute

D) Petitions stand disposed of in above terms.

(RAVINDRA V.GHUGE)
JUDGE

(S.S.SHINDE)
JUDGE

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