

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6976 OF 2015

Mr. Nitin Naresh Daki

.... Petitioner

VS

Zilla Parishad, Raigad and ors.

.... Respondents

Mr. A.K. Jalisatgi i/by Mr. C.M. Lokeshappa for the petitioner.

Mr. C.G. Gavenekar for respondent No.2.

Mr. Sandeep Babqar, AGP for respondent No.3.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.**

DATE : August 30, 2016

ORAL JUDGMENT (Per Anoop V. Mohta J.):-

Rule, returnable forthwith. Heard finally by consent of parties.

2 Pursuant to advertisement dated 7 September 2013 issued by Respondent No. 1, the Petitioner along with others, being physically handicapped challenged person (suffering more than 45% disability) applied for the post of Peon as reserved for the sports persons. The Petitioner, inspite of this disability has been participating in sport activities in International, as well as, State

Level Tournaments. He has won various awards and certificates from various Associations as a Power Lifting Champion. The Petitioner was selected but kept on waiting list, as he had obtained 46 marks. One Mr. Ajay Khade who obtained 47 marks was selected as per the list dated 18.01.2014 for the post. However, some time in April 2014, Mr. Ajay Khade communicated his inability to join the post. The Petitioner being the only eligible candidate as per the list, ought to have been appointed by the Respondent. For un-known reasons, the Petitioner was not appointed, within the prescribed period.

3 The immediate procedure to be followed, for such appointment on vacant post as reflected in Clauses 16, 17 and 18 of the Government Resolution dated 30.04.2015, was not followed by the Respondent. We have noted that clause 17 provides that in such situation, the Department is required to appoint the next waiting list candidate temporarily, subject to the completion of formality.

4 We have on 18 November 2015 passed the following order:

“Considering the averments made and in view of the

fact that the Petitioner is otherwise eligible for the post of peon (player) and merely because the concerned Department forwarded the communication on 20 January 2015 thereby taking shelter of expiry of one year, in our view, should not be the reason to deny the claim of the Petitioner for the post of peon being at serial No.1 in the Waiting List and as the stated selected person did not join the post of peon in question.

2 Therefore, there shall be ad-interim order in terms of prayer clause (d). It is made clear that it is operative only for the one post of peon (player).”

We have noted that even communication dated 6/12/2014 was an afterthought and was contrary to the Rules/conditions so referred above as the Petitioner was not even appointed temporarily. The Respondents ought not to have waited for such long time for the completion of formality without appointing the Petitioner, being eligible for the vacant post.

5 The Petitioner, therefore, addressed a letter in January 2015 for the appointment. However, the Respondent did not give any employment to the Petitioner. On the contrary, a wrong certificate was issued by the Respondent. In February 2015, however, a correction was made. For this mistake and delay, no fault could have been attributed to the Petitioner. The Petitioner's application,

inspite of repeated communication and representation, except assurance, was not moved forward. Therefore, again a representation was made by the Petitioner. By intimation dated 22-04-2015/3.6.2015, it was communicated that the selection/waiting list was of January 18, 2014 and, therefore, the employment could not be provided. The Petitioner moved this Petition on 29 June 2015.

6 The above stated reasons and the specific averments made by the Petitioner, including the prayers so made are not denied by the Respondents till this date. A statement is made that the vacancy is still available. Even otherwise, after considering the above admitted position on record and the advertisement conditions so referred above and in view of the fact that the Petitioner's crystalised right to be considered being the only eligible person on waiting list, the Petitioner ought to have been appointed on the post. Respondent cannot deny the accrued right of Petitioner to be appointed on the post within the year itself - the reason that one year period is lapsed, in the case in hand, is unacceptable.

7 This Court in *Udaysing Jalamsingh Valvi vs. Secretary, District Selection Committee, Alibagh and anr*¹ in para 10 observed as under:

“10 Clause-9, in our view, cannot be read to mean that the person though appointed as per the list so prepared, if failed to appear, no other person can be appointed on the post within that year. In our view, the appointed candidate if failed to appear within reasonable time and in the present case, never appeared for want of caste certificate and as the Petitioner being the next eligible candidate having validity certificate, ought to have been appointed in that year itself. The communication therefore, so given and thereby rejected the claim of the Petitioner shows non-application of mind to the facts, as well as, to the Government Circular itself. The respondents cannot be permitted to deny the rights of the Petitioner, as in our view crystalized as referred above, merely because the respondents failed to take action within the prescribed period of one year.”

8 Therefore, taking overall view of the matter, we are of the view that the Petitioner has made out a case and as no sustainable defence is raised, therefore, we are allowing the Petition in terms of prayer (a). Hence, the following order :

ORDER

(a) The Writ Petition is allowed in terms of prayer (a) which

1 2014 (2) Mh. L. J. 815

reads thus :

“That this Hon'ble Court may be pleased to issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing and commanding the Respondents No. 1 and 2 to forthwith employ the Petitioner as “Peon” as per the select/waiting list dated 18 January, 2014.”

(b) Rule made absolute accordingly.

(c) No costs.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)