

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 611 OF 2016

Smt. Vaishali Sunildatta Dongare

... Petitioner

Vs

1. Zilla Parishad, Thane & Ors.

... Respondents

Mr. I.M. Khairdi for the Petitioner.

Mr. G.B. Walawalkar i/b Mr. Shankar P. Thorat for the
Respondent Nos.1 and 2.

Ms. Sushma Bhende, AGP, for the Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

WEDNESDAY, 7TH DECEMBER, 2016

P.C. :

1. The petitioner has approached this Court seeking to quash
and set aside an order – Annexure-J to the writ petition.

2. The relief is sought in the peculiar circumstances. The
petitioner belongs to Vanjari Nomadic Tribe. She passed her SSC
examination, HSC examination in 1991 and 1993. She graduated
in Arts in the subject of History. Thereafter, she obtained

Masters Degree. These qualifications were acquired in 1997 and 2002. Then, she passed her MSCIT Examination six months course in 2003. She also obtained a Bachelor of Education qualification in 2004. In 2005 she married Sunildatta Dongare. He was in service of the first respondent. Unfortunately for her and the family, her husband expired on 17th December, 2005. On the date of his death, he was in service. Therefore, she applied for compassionate appointment and in place of her deceased husband. She was appointed on 24th March, 2008, as a Peon in Class IV cadre by the respondent Nos.1 and 2.

3. She made various representations and pointed out that if she has obtained educational qualifications and as noted above, then, commensurate with that, she should be considered for a higher category or grade; at least her claim to be appointed in Class III cadre should be considered. Such representations and in writing having not met with any success, she instituted Writ Petition No.6696 of 2014 in this Court. It was directed that these representations of the petitioner, which were pending, ought to be decided within a given time frame. Satisfied with that direction, the petitioner allowed the disposal of the writ petition.

Thereafter her representations were duly considered and, by the impugned order, they have been rejected.

4. Mr. Khairdi appearing for the petitioner would submit that the two grounds or reasons assigned in the impugned order are completely untenable in law. He would submit that the petitioner has obtained the educational qualifications. Mr. Khairdi relied upon the list of Peons in terms of seniority and in which he would rely upon the educational qualifications obtained by the petitioner. He would submit that the petitioner is one of the two M.A. B. Ed. qualified candidate. She has also been competing with the respondent No.7 who has obtained similar qualifications.

5. However, in her appointment order and appointing her as a Peon there was no stipulation that in the event the petitioner fulfills the criteria of experience of three years, then, in the event any vacancy is available in Class III grade / cadre, she can be considered. Mr. Khairdi submits that absent such stipulation she would qualify for the Class III post. Similar relief was granted to other candidates, but the petitioner's claim has not been considered.

6. After hearing Mr. Khairdi at some length and perusing with his assistance the order passed, copy of which is at page 56 of the paper-book, it is evident that the petitioner relies upon the case of one Mr. Nitin Kuser. The said Kuser had been reverted back from the post of Senior Assistant to that of the Peon. That was because though appointed on compassionate grounds, he was elevated to the class III cadre / grade without the requisite educational qualifications. There were others who were senior to him. It is stated that the said Kuser was held to be not eligible only because he did not possess the requisite eligibility criteria of a degree. He was, therefore, not eligible for being appointed and was reverted. However, such is not the case of the present petitioner. It is pointed out that the petitioner lacks the experience of teaching of three years. Secondly, there are others who are senior to her in the list. Finally, the absence of above stipulation in her appointment order.

7. We are of the firm view that the petitioner having educational qualifications deserves consideration for appointment in Class III cadre. In the light of the unfortunate and

tragic circumstances arising out of the untimely death of her husband, the petitioner accepted whatever post was available and in the lowest cadre. That was only to support the family. Though qualified and for a teaching post, she could not wait and accepted the appointment as a Peon in the Zilla Parishad. We do not think that her educational qualifications and of M.A. B.Ed. should be wasted. More so, when she has been serving with the Zilla Parishad from 24th March, 2008. Having served as a Peon for eight and half years and bearing in mind her educational qualification, we do not think that she should be denied appointment to Class III grade. That too because there was no stipulation as mentioned in the impugned order in her appointment letter. The petitioner cannot be faulted for absence of such a stipulation. Secondly, there may be persons senior to her in the list or awaiting appointment, but bearing in mind her educational qualification, she should be considered. We do not think that merely because a highly qualified candidate accepts the post of a Peon in a Public Sector Undertaking or a State Body or Local Authority his/her qualification should be wasted and endlessly. She cannot be made to wait for promotions and stagnate in the event promotional posts are not available in the

post of a Peon. That would discourage those who have obtained the educational qualifications and higher degrees by their strenuous efforts, studies and dedication. It is only because the Government jobs are scarce, the family needs support, such appointments are accepted. That should not be held permanently against such candidates. If the rules permit and if claims consistent with merit can be awarded in making appointments to the promotional posts, then, the deserving candidates like the petitioner and their cases should be considered.

8. We hope that irrespective of whatever has been observed in the impugned order, such considerations would be given. The authorities are directed to ignore the absence of any stipulation in the appointment letter. The authorities should also bear in mind that the petitioner, though qualified and eligible to be appointed as a teacher, was forced to serve as a Peon on account of her husband's untimely death. She is the only one to support her children. In the circumstances, we do not think that the criteria of experience should be held against her and if she is otherwise eligible, fit to teach, then, the Zilla Parishad should consider appointing her in either a teaching post or supervisory

post. That may be done in accordance with law.

9. With the above clarification, we dispose of this writ petition.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.