

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3572 OF 2015

(Aniruddha Vyankatrao Kendre and others vs. Zilla Parishad, Gondia and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Smt. N. Jog, Advocate for petitioners.
Shri A.Y. Kapgtate, Advocate for respondent no.1.
Shri S.B. Bissa, Assistant Government Pleader for
respondent nos. 3 to 5.

CORAM : B.P. DHARMADHIKARI AND
KUM. INDIRA JAIN, JJ.

DATED : JULY 21, 2016

Heard for some time.

Petitioners are selected after a proper advertisement dated 18/3/2010 as Junior Assistants (Clerks). The advertisement does not specify that appointment or work is temporary. On the contrary, it is stipulated that appointment shall be on contract basis initially for three years and thereafter regular pay scale shall be made applicable. In appointment order, this position finds mention. After petitioners completed three years satisfactorily, question of extending them regular pay scale cropped up. At that juncture, respondents noticed that there was some

error and post of Junior Assistant (Clerk) was wrongly created and filled in. The respondents were, therefore, directed by Divisional Commissioner to look into the matter and to find out Officers responsible for the same.

Adv. Jog appearing for petitioners points out that in fact by later communication, Zilla Parishad has been asked to take necessary steps for continuation/absorption of petitioners at its level, if their services are essential.

Adv. Kapgate for respondent no.1 without prejudice to contentions raised in reply before this Court, submits that petition is premature. The petitioners can wait till respondent no.1 takes suitable decision at its level. He further adds that without creating any precedent and if this Court so desires, respondent no.1 can also extend opportunity of hearing to petitioners.

Shri Bissa, learned Assistant Government Pleader appearing for respondent nos.3 to 5, submits that if in public employment, posts were not available, the same ought not to have been filled in.

After hearing respective Counsel, we find that advertisement was to fill in permanent posts on permanent basis. Initial engagement on contract basis was to last only for three years. It, therefore,

prima facie appears that workload existed. If the work existed, respondent no.1 could have then proceeded to place that workload on some other employee, who would have been recruited as a Clerk or as an Assistant. However, this being a hypothetical issue, at this stage, we cannot record any finding on it.

As we prima facie find that workload exists and respondent no.1 has been allowed to take suitable decision at its own level, we direct petitioners to make appropriate representation to respondent no.1 in this respect within four weeks from today. If such representation is made, respondent no.1 shall proceed to take suitable decision upon it as per law within next eight weeks. The orders, if adverse to the petitioners, shall not be given effect to for a period of six weeks thereafter. Till then, interim protection given by this Court to petitioners on 26/6/2015 shall continue. With these directions, we dispose of the petition. No costs.

JUDGE

JUDGE

khj

CERTIFICATE

I certify that this order uploaded is a true
and correct copy of original signed order.

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Kamal H. Jeswani
Private Secretary

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22/07/2016