

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

WRIT PETITION NO. 4654 OF 2015

(Swati Vijayrao Manekar vs. The State of Maharashtra and others)

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

Shri R.K. Maheshwari, Advocate for petitioner.
 Shri A. Chutake, Assistant Government Pleader for
 respondent no.1.
 Shri P.P. Deshmukh, Advocate for respondent nos.2 and
 5.
 Shri N.S. Deshpande, Advocate for respondent no.3.
 Shri N. Majithia, Advocate for respondent no.4.

CORAM : SMT. VASANTI A NAIK AND
 KUM. INDIRA JAIN, JJ.

DATED : AUGUST 31, 2016

By this writ petition, the petitioner challenges the order of the respondent no.2, dated 10/8/2012, appointing the respondent no.3 on the post of part time Instructor under the Sarva Shiksha Abhiyan.

In pursuance of the advertisement dated 1/8/2012 issued by the School Management Committee of the Zilla Parishad under the Sarva Shiksha Abhiyan inviting applications from the interested candidates for appointment on the post of part time Instructor, the petitioner as well as respondent no.3 applied with others. As per the said advertisement, for appointment on the post of part time Instructor, a candidate was required to possess a Secondary School Leaving Certificate and Diploma in A.T.D./A.M. and should have secured the qualification of Sangeet Visharad.

It is not in dispute that the petitioner as well

as the respondent no.3 possess the Diploma – A.T.D. and both have passed the S.S.C. examination. It is the case of the petitioner that as per the advertisement, if more than one application was received for the appointment on the post of part time Instructor, the local resident of the place, i.e. Itawa Ward would have preference. It is stated that as per the advertisement, preference was liable to be granted to a candidate, who has secured more marks in A.T.D., A.M. or Sangeet Visharad qualification. It is the case of the petitioner that though the respondent no.3 has secured only 49.45% marks in A.T.D. examination, she falsely showed inflated marks for seeking the appointment. It is stated that the respondent no.3 does not reside in Itawa Ward and hence, the petitioner was entitled to a preference while making the appointment. It is further stated that since the respondent no.3 is appointed on the post of part time Instructor by the order dated 10/8/2012, the petitioner has challenged the said order by filing the instant petition.

On the other hand, it is submitted on behalf of respondents that the petitioner is less meritorious than the respondent no.3 and the case of the petitioner that the respondent no.3 does not reside in Itawa Ward is also incorrect. It is stated that the respondent no.3 has secured 49.45% marks in A.T.D examination, whereas the petitioner has secured only 42% marks. It is further stated that the petition suffers from laches inasmuch as the respondent no.3 was appointed on the post of part time Instructor by the order dated 10/8/2012 and the

petition is filed on 29/7/2015.

On hearing the learned Counsel for the parties and on a perusal of the advertisement and the documents annexed to the writ petition, we find that the petition is liable to be dismissed on the ground of laches and also on merits.

Admittedly, the appointment of the respondent no.3 is made by the order dated 10/8/2012. The petition is filed on 29/7/2015. In a matter of appointment of a part time Instructor, the petitioner could not have filed the petition after three years from the date of appointment. Mere making of representations to the respondent Authorities in respect of denial on their part to appoint the petitioner and/or filing of applications before the appropriate Authorities for seeking more information in respect of educational qualifications and the residence of respondent no.3 cannot be sufficient explanation for the delay of nearly three years in filing the writ petition. At the time of passing this order, though it is stated on behalf of the petitioner that a civil suit for mandatory injunction was filed and the same was dismissed on the ground of absence of jurisdiction, the said fact is not averred in the writ petition.

In any case, we are clearly of the view that the writ petition is also liable to be dismissed on merits. The document annexed by the petitioner to the rejoinder falsifies the claim of the petitioner that the respondent no.3 is not a resident of Itawa Ward. Firstly, the averment in the writ petition that the respondent no.3 is

not a resident of Itawa Ward is disputed by the respondent no.3 and the respondent no.3 has asserted that she is a resident of Itawa Ward. The document annexed to the rejoinder at Annexure-II also supports the case of the respondent no.3 that she is a resident of Itawa Ward as the Information Officer has stated in the reply to the queries made by the petitioner that the petitioner is residing in Itawa Ward for a longer time than the residence of respondent no.3 in Itawa Ward. We find that the document at Annexure-II to the rejoinder clearly shows that the Information Officer has supplied the information with his opinion and judgment, probably with a view to support the case of the petitioner.

We find that the respondent no.3 has secured more marks than the petitioner at the A.T.D. examination and since respondent no.3 has secured more marks, there is no question of granting preference to the petitioner on the basis of her residence in Itawa Ward. The question of granting preference would arise if all other things are equal. In the instant case, admittedly the respondent no.3 has secured more marks than the petitioner at the A.T.D. examination and hence, there is no question of granting preference in favour of the petitioner.

Since no case is made out by the petitioner for grant of relief, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

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CERTIFICATE

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

Uploaded by :

Kamal H. Jeswani
Private Secretary

Uploaded on :

3/9/2016