

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

930 WRIT PETITION NO. 6627 OF 2004

...
MRS.JIJABAI @ NIRMALA RAJARAM MASURE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr.D B Bhange
AGP for Respondent No.1 : Mr.B.A.Shinde
Advocate for Respondent Nos.2 & 3 : Mr.V.D.Hon
Advocate for Respondent No.4 : Mr.Anmol G.Kedar h/f. Mr.B.L.Sagar-
Killarikar.

...
**CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

DATE: 5th October, 2017

PER COURT :-

1) The petitioner seeks a Writ of Certiorari for quashing and setting aside the order dated 2.8.2004 passed by the respondent No.3 thereby appointing respondent No.4 as Anganwadi Helper at Village Savargaon, Tq.Devni, Dist.Latur and also seeks a writ of mandamus against respondent Nos.2 & 3 directing to appoint the petitioner as Anganwadi Helper at Village Savargaon, Tq.Devni, Dist.Latur.

2) After hearing the learned counsel for the parties and on perusal of the order passed on 8.8.2017, and after hearing the parties on 11.9.2017, this Court accepted a letter dated 4.9.2017 issued by respondent No.3 produced through their learned counsel, on record confirming that post of Anganwadi Helper is vacant in Anganwadi-Sr.No.13 at Devni, Tq.Devni, District Latur.

3) The learned counsel for respondent Nos.2 & 3 made a statement that if the petitioner applies for the said post, her application would be considered, provided that the petitioner shall not claim any deemed date of appointment from the earlier date. The learned counsel for the petitioner made a statement before this Court that the petitioner would not claim any deemed date for the appointment from the date of filing of petition or earlier, if the appointment is made to the said post.

4) This Court accepted the statement made by the learned counsel for the petitioner and directed the petitioner to make an application for appointment on the said post prescribed in the said communication dated 4.9.2017 and directed the respondent Nos.2 & 3 to consider the application of the petitioner for the said vacant post and to inform the decision to the petitioner within one week from the date of receipt of such application.

5) Learned counsel for respondent Nos.2 & 3, however, states today that since the said post, which is lying vacant in respect of Anganwadi-Sr.No.13 is at Devni, Tq.Devni, Dist.Latur, and the petitioner being resident of Savargaon, Tq.Deoni, she would not be entitled for the said post. In support of the said contention, the learned counsel invited our attention to the Government Resolution dated 13.08.2014 and more particularly, condition No.2(B).

6) A perusal of the Order dated 11.9.2017 indicates that the respondent Nos.2 & 3 were fully aware that the petitioner is resident of Savargaon and not Devni, but they made such statement before this Court. Based on such statement, the petitioner also agreed not to make any claim of deemed date for the appointment from the date of filing of petition or earlier.

7) In our view, respondent Nos.2 & 3 now cannot be allowed to rescind from the statement made before this Court. Be that as it may, in the factual circumstances of this case, we are of the view that the petitioner deserves to be appointed to the said post of Anganwadi Helper, which is lying vacant in Anganwadi-Sr.No.13 at Devni, Tq.Devni, District Latur. Since the respondent Nos.2 & 3 are responsible for refusing to appoint the petitioner earlier, we are of the view that the petitioner deserves to be appointed to the said post.

8) In view of the aforesaid circumstances, in our view, respondent Nos.2 & 3 cannot insist the petitioner to comply with the requirement provided in Clause-2(B) of the Government Resolution dated 13.8.2014. We, therefore, pass the following Order:-

ORDER

I) The respondent Nos.2 & 3 are directed to appoint the petitioner to the post of Anganwadi Helper, which is lying vacant at Anganwadi-Sr.No.13 at Devni, Tq.Devni, District Latur, within four weeks from today, without fail.

II) It is made clear that upon such appointment, the petitioner shall not press for deemed date for the appointment from the date of filing of the petition or earlier date.

III) The statement made by the learned counsel for the petitioner is once again accepted as an undertaking to this Court.

IV) The parties to act on the authenticated copy of this Order.

V) Rule is made absolute in the aforesaid terms. No order as to costs.

(SUNIL K. KOTWAL, J)

(R.D. DHANUKA, J)

spt