

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7303 OF 2005

Shri. Anna Jagannath Mahajan,
Age: 37 years, Occu: Service,
Resident of Tarwade, Taluka Parola,
District. Jalgaon.**Petitioner.**

Versus

1. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
At Jalgaon 425 001.
2. Savata Mali Shikshan Prasarak Mandal,
Jalgaon, Through its President at
Zilla Peth, Jalgaon 425 001.
3. The Head Master,
Mahatma Fule Vidyalaya,
Dharangaon,
Taluka & District. Jalgaon.**Respondents**

Mr. A.S. Deshpande, Advocate for Petitioner.
Mrs. P.V. Diggikar, AGP for Respondent No.1.
Mr. Dipesh Pande h/f Mr. U.S. Malte, Advocate for Respondent Nos.2
and 3.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATED : June 21, 2017.

ORAL JUDGMENT : [PER T.V. NALAWADE, J.]

. The petition is filed for giving direction to respondent No.
1 to give approval to the appointment of the petitioner made by
respondent No. 2. Relief of setting aside the communication made by
respondent No. 1 by which the approval was refused is also claimed.

Further, the relief of quashing of Government Resolution ('GR' for short) dated 6.2.2004 was also claimed by making amendment in the petition.

2. It appears that the petitioner was appointed by respondent No. 2 on 16.8.1991 as a Peon on temporary basis, but his services came to be terminated on 26.3.1993 though effect was given from 30.4.1993 considering the academic term. This order of termination was challenged by the petitioner by filing appeal before the School Tribunal, but the appeal came to be dismissed. Then Writ Petition No. 2545/1995 was filed by the petitioner for giving directions in view of the aforesaid circumstances. At the time of disposal of the petition at para No. 5, following observations were made by this Court.

"5. In the result, Writ Petition is dismissed. However, it is made clear that as and when there occurs a vacancy in the school of the respondent and as and when the same is advertised in accordance with Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, it shall be open for the petitioner to make an application and in such situation, the Management may consider the claim on merits.

In the circumstances of the case, there shall be no order as to costs."

3. It appears that though there was order of aforesaid nature of this Court, the Education Officer informed to respondent No. 2 -Institution that in view of the order of the High Court if any vacancy occurs of post of Peon, then on priority basis, the present petitioner needs to be considered for the said post. This communication was made on 28.3.2003. It appears that on 17.4.2005, respondent No. 2 – Institution directly made the appointment of the petitioner on the post of Peon as one post had fallen vacant. There was no advertisement and no recruitment process was started by following proper procedure. This appointment was sent for approval to the Education Officer. The Education Officer refused to give approval by giving reason that there was ban on recruitment in view of GR dated 6.2.2004. It can be said that the other reason that the appointment was not made as per the procedure ought to have been given, but such reason was not given and the reason of GR was given.

4. The petitioner was directly appointed as Peon in the school without following due procedure and so, his appointment could not have been approved. Thus, no error can be seen in the order of refusal made by respondent No. 1 to give the approval to the appointment of the petitioner. There is one more reason that

only one post of Peon was available as per the Rules made in that regard and as one Peon was already appointed, there was no post available. In view of these circumstances also, no approval could have been given. Thus, it is not possible to interfere in the order made by respondent No. 1. The petition stands dismissed. Rule stands discharged.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/