

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

WRIT PETITION NO. 10708 OF 2016

Navnath s/o Pandurang Vadak,
Age 36 years, Occ : Service
as a peon, in Pandit Nehru
Vidyalaya, Nimgaon Jali,
tq. Sangamner Dist. Ahmednagar. .. Petitioner

Versus

- 1] The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya Mumbai - 32.
- 2] The Education Officer (Secondary)
Zilla Parishad, Ahmednagar.
- 3] The President/Secretary,
Maharashtra Shikshan Sanstha,
Nimgaon Jali, tq. Sangamner,
District Ahmednagar.
- 4] The Head Master,
Pandit Nehru Vidyalaya,
Nimgaon Jali, tq Sangamner
District Ahmednagar. .. Respondents

Shri Amol N. Kakade, Advocate for the Petitioner.
Shri S. W. Mundhe, A.G.P. for Respondent Nos. 1 and 2.
Shri C. D. Fernandas, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 04TH SEPTEMBER, 2017.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner is appointed as a peon on 01.01.2008 by the respondent Nos. 3 and 4 in respondent No. 4 school. The proposal seeking approval to the appointment of the petitioner is rejected under order dated 02nd February, 2015 on the ground that the petitioner belongs to open category, whereas one post from O.B.C. and one post from S.B.C. category is still vacant.

3. Mr. Kakade, the learned counsel for the petitioner submits that, the petitioner is appointed after following due procedure of law. An advertisement was issued and thereafter following selection process, the petitioner was appointed. The learned counsel submits that, there are five vacant posts with the respondent institution. Same can be filled in by the institution from the reserved category.

4. The learned counsel appearing for respondent Nos. 3 and 4 submits that, the petitioner was appointed on vacant post as one peon namely Deshmukh D. R. came to be promoted as junior clerk from open category. The learned counsel further submits

that, the respondent Nos. 3 and 4 have filed affidavit before this Court thereby undertaking that, there are five posts of peon still vacant as per the verified roster and the respondents would fill in the vacant posts by appointing a candidate from S.B.C. and another from O.B.C. category with the permission of the Education Officer.

5. The learned Assistant Government Pleader submits that, as the backlog was not filled, the order was rightly passed by the Education Officer.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. This Court on August 21, 2017 had adjourned the matter so as to enable the learned counsel for respondent Nos. 3 and 4 to file reply affidavit in the form of undertaking that the respondents shall fill in vacant O.B.C. and S.B.C. posts from vacancy available. Pursuant thereto, respondent Nos. 3 and 4 have filed affidavit thereby undertaking to fill in the vacant posts from O.B.C. and S.B.C. category candidates. The said undertaking is accepted.

8. Considering the above, we pass following order.

9. The impugned order is quashed and set aside. The respondent No. 2 (Education Officer) shall reconsider the proposal submitted to it for approval and shall not reject it on the ground that there is backlog of one O.B.C. and one S.B.C. category candidate. The respondent Nos. 3 and 4 shall fill in vacant posts of the peon from O.B.C. and S.B.C. category candidate by following due procedure of law. The Education Officer shall decide the proposal of the petitioner expeditiously and preferably within a period of three (03) months from today.

Rule is made absolute in above terms. No costs.

Sd/-

[MANGESH S. PATIL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 17