

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9870 OF 2016

Ramesh Ananda Khonde

Petitioner

Versus

The Shikshan Prasarak Mandal,
Jalgaon and others

Respondents

Mr. V.P. Patil advocate for the petitioner
Mr. K.C.Sant advocate for Respondent Nos.1 to 3
Mr. S.K. Tambe, AGP for respondent No.5

CORAM : **RAVINDRA V. GHUGE, J**
(Date : 10th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the Judgment of the School Tribunal dated 15.4.2014 by which the appeal No.33/2010 filed by the petitioner under section 9(1)(b) of the MEPS Act, 1977 has been rejected.

2 I have considered the strenuous submissions of Shri V.B. Patil and Shri K.C.Sant on behalf of the respective litigating sides.

3 It appears from the record that the petitioner joined the respondent school i.e. Lalaji Narayanji Sarwajanik Vidhyalaya, Jalgaon as a Peon on 11.6.1979. He was promoted as a

Laboratory Attendant on 1.12.1988. On 31.5.2010 one Shri P.S. Sonawane retired as a Laboratory Assistant. The petitioner claims to be eligible for the said post.

4 The respondent Management published an advertisement on 31.5.2010, calling for applications with regard to the position of Laboratory Assistant. The petitioner applied on 17.6.2010. Interviews were held on 19.6.2010. On 21.6.2010, respondent No.4 was appointed as a Laboratory Assistant.

5 Grievance is that respondent No.4 joined as a Peon in 1996. Considering the effect of category 'H' under Schedule F of the MEPS Rules, 1981, a seniority list of Laboratory Assistants is maintained. A seniority list of Laboratory Attendants, Naik, Oilman etc. is maintained in lower grade staff. Clause with regard to lower grade staff and notes No.1, 2 and 3 there-below reads as under:-

"Guidelines for fixation of seniority of non-teaching staff -

Laboratory Assistants. - A seniority list of Laboratory Assistants shall be maintained on the basis of the date of appointment. The incumbents of the posts shall not be held eligible for promotion to any other post.

Lower Grade Staff. - A common seniority list of Laboratory Attendant, Naik, Oilman, Machine Attendant, Peon, Watchman, Chowkidar, sweeper, Call-Woman, Kamathi, Attendant, Laboratory Hamal, liftman and such other lower grade staff, if any, shall be maintained on the basis of the dates of their appointment. If any of the lower grade staff improves his qualification as prescribed either for the post of Laboratory Assistant or clerk, such employee should be given preference while filling in the said post according to his place in seniority.

Note 1. - Where Management runs more than one School the seniority list for particular cadre shall be a combined seniority list of all persons in that cadre working in all the Schools of the Management. The total service rendered by the persons in a particular cadre in any of these schools shall be taken into consideration for the purpose of seniority. The various promotions shall be effected on the basis of such common seniority list.

Note 2. - If the date of appointment of two or more persons in the same cadre happens to be the same the person who is senior by age shall be considered as senior. "

Note 3. - For the purpose of promotion the vacancies occurring in all the Schools run by the same Management shall be pooled together. "

6 Prima facie, it appears from the phraseology used in maintaining of common seniority list of lower grade staff that, if any of the lower grade staff employee is qualified, which also means that he bears that qualification, by which he would be eligible for the post of Laboratory Assistant or Clerk, the Management has to give preference to such person for promotion to Laboratory Assistant or clerk, depending on his seniority. Note No.1 makes it even further clear in so far as various promotions are concerned.

7 However, the Written Statement filed by the Management and especially paragraph Numbers 6, 7 and 8 dated 23.11.2012 would indicate that presently, there is a ban on recruitment. Only two posts of Laboratory Assistants are available, out of which, one post is filled in by a person belonging to the reserved category and one post is for the open category. The petitioner belongs to the OBC category.

8 The Written Statement further indicates that, respondent No.4 Dinesh Suresh Vaidhya has been temporarily appointed as Laboratory Assistant on a consolidated monthly honorarium of Rs.2,000/- only. It is a categorical statement of the Management,

in the Written Statement as well as before this Court that, respondent No.4 is neither selected, nor appointed as a full time Laboratory Assistant on any sanctioned vacant post to which the salary would be paid through the salary grants. I, therefore, find that Respondent No.4 has not been appointed full time as a Laboratory Assistant and there is no question of granting approval to such engagement of respondent No.4 as the same is not an appointment as against a substantive post which is vacant and the management is making the payment of the stipend from its pocket.

9 Considering the guidelines for fixation of seniority of the non-teaching staff under category 'H' below Schedule 'F' and keeping in view the description of maintenance of seniority of the lower grade staff, with notes No.1 and 2, any person, be it the petitioner or any other similarly situated person, who falls within the ambit of lower grade staff, based on his seniority and his qualification, would be entitled by way of a preference for being promoted as a Laboratory Assistant or clerk.

10 It is in the peculiar facts of this case, where the Management has pointed out the ban on recruitment vide Government resolution dated 5.7.2010 and the contents of the

written statement, which is on an affidavit, that respondent No.4 has neither been promoted, nor directly appointed on a permanent vacant post of Laboratory Assistant. Hence this petition cannot be entertained.

11 This petition, challenging the Judgment of the School Tribunal, by which the Appeal of the petitioner has been dismissed, is devoid of merit in the peculiar facts of this case and accordingly the same stands dismissed.

12 It is however, made clear that in the event of the respondent Management seeking permission to fill in the post of Laboratory Assistant, in future, on a regular basis, the Management shall follow the the guidelines for fixation of seniority of non-teaching staff and the provisions reproduced above, for considering any person including the petitioner amongst the lower grade staff for promotion to the post of Laboratory Assistant or clerk.

(RAVINDRA V. GHUGE , J)