

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4426 OF 2013

Dattatraya Vishwasrao Jagtap

.... Petitioner

Vs.

The Chief Executive Officer,
Ratnagiri Zilla Parishad & Others

.... Respondents

Mr. N.J. Patil for the Petitioner.

Mr. Neel Helekar for Respondent No.1.

Ms Aparna D. Vhatkar, AGP, for Respondent Nos.2
to 4.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : FEBRUARY 17, 2017

P.C:

1. In terms of our earlier Order, the original records have been produced by the learned AGP. The Dean of the B.J. Medical College, Pune has deputed an official to remain present in this Court with the original record.

2. Our earlier Order and direction was clear. It was based on a communication, copy of which is at page 30 of the

paper-book. That communication from the General Administration Department, Zilla Parishad, Ratnagiri, dated 31-8-2012, addressed to the Chairman, Board of Referees (Ophthalmology Department), B.J. Medical College and Sassoon Hospital, Pune states that the petitioner has been selected for appointment to the post of Extension Officer (Statistics). He is selected from the Category of Disabled (Low Vision). However, since he would be required to attend during the course of his duties several offices, beneficiaries and would have to collect the statistical data, whether he is otherwise fit or not should be reported. That was after a physical examination by the concerned College.

3. The College took this as a communication so as to carry out a test to judge and decide upon the petitioner's vision. The further communication dated 18-10-2012 from the Ratnagiri Zilla Parishad to the petitioner refers to not only the Zilla Parishad's earlier letter dated 31-8-2012 but also to a report dated 26-9-2012 from the B.J. Medical College and Sassoon Hospital, Pune (Department of Ophthalmology). By this

communication, Annexure-I on page 32 of the paper-book, the petitioner is informed that he cannot be appointed, for the Sassoon Hospital has reported that he is physically unfit. Meaning thereby, he has not successfully cleared the physical examination test. That is how the selection of the petitioner was cancelled.

4. The petitioner had pointed out to us the Certificate from the Board of Referees from the Sassoon Hospital, Pune, copy of which is at page 33 of the paper-book. By this certificate, dated 24-9-2012, it was certified that the petitioner is unfit for the post under the Visually Handicapped Category. He is unfit to perform the duties of the Extension Officer (Statistics) in the office of the Zilla Parishad, Ratnagiri.

5. This Certificate seems to suggest that the petitioner is unfit for the post under the Visually Handicapped Category. However, as per our earlier order, the Zilla Parishad having selected the petitioner and sent him for a physical examination, we do not know how merely because the Zilla Parishad's letter

to the Sassoon Hospital, Pune is addressed to the Ophthalmology Department and particularly the Board of Referees in the Ophthalmology Department that the petitioner's eye sight and vision were examined. The Ratnagiri Zilla Parishad desired no opinion on his visual impairment or disability. It invited an opinion on his physical capacity and after a physical examination. That is why we had called for the original record.

6. The record instead of clarifying the position, compounds the confusion already created. It rather proves that the Ratnagiri Zilla Parishad having accepted the fact that the petitioner is a deserving candidate, appointed him to a post reserved for disabled (low vision) and sent him for a physical examination. Later on it has changed its mind and relying on this report of the B.J. Medical College and Sassoon Hospital (Department of Ophthalmology) declared the petitioner unfit and ineligible for the post.

7. During the course of arguments, earlier and even today, we enquired from Mr. Helekar, appearing for the

Ratnagiri Zilla Parishad about the post being vacant or otherwise and, on instructions, he states that the post is still vacant. The first respondent to this writ petition has not appointed anybody against this reserved seat. Mr. Helekar states that since the petitioner was held to be visually impaired/low vision and appointed against the post reserved for the disabled (low vision), he is fit to hold the post in this category but his physical fitness otherwise needs to be assessed and examined. It is in these circumstances that we suggested to Mr. Helekar and Ms Vhatkar, appearing for the State that let the appointment order be issued to the petitioner so that he is appointed on that post but subject to his being examined for his physical fitness by the Civil Surgeon, Civil Hospital, Ratnagiri. The petitioner, as soon as he assumes charge, shall be sent for such examination and the report of such examination shall be forwarded within a period of two weeks, after the same is conducted and carried out. The petitioner shall be appointed to the post on temporary basis subject to proving his physical fitness. If the report is positive and certifies that the petitioner is otherwise fit to

discharge the duties as enumerated, particularly in the letter dated 31-8-2012, Annexure-H to the paper-book, then, the petitioner shall be appointed by the Ratnagiri Zilla Parishad in terms of the Rules and Regulations and his appointment shall be governed by the same. He shall be then extended all the benefits as per the Rules and Regulations applicable to this post. This order is passed because the action of the Zilla Parishad and the State is vitiated by non-application of mind. It is also arbitrary and discriminates against a disabled candidate.

8. The writ petition is disposed of in the above terms.

9. All concerned to act upon an authenticated copy of this order.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)