

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4262 OF 2000

Sanjay Yashwant Dighe
Age 33 yrs., Occ. Service.
R/o. House No. 273,
Maharashtra Hsg. Colony,
Satpur, Nashik – 7.

.. Petitioner

Vs.

1. Vividh Vikas Sanghtana
Satpur, Nashik.
Through its President and/or Secretary
C/o. Chhatrapati Shivaji Vidyalaya
(Primary), Satpur, Nashik – 7.

2. Shri Chhatrapati Shivaji Vidyalaya
(Primary), Satpur, Nashik – 7.
Through its Head Master.

3. Administrative Officer
Nashik Municipal Corporation
Education Board,
Pandit Colony, Nashik.

4. Smt.Manisha Bhagvat Bhole
Age 30 yrs., Occ. Service,
C/o. Chhatrapati Shivaji Vidyalaya
(Primary), Satpur, Nashik – 7.

.. Respondents

Mr.Anilkumar K. Patil a/w Mr.Jitendra Gaikwad, for the Petitioner.
Mr.A.R. Shaikh, for Respondent No.1.
Mr.Shekhar Jagtap i/b M/s.J.Shekhar & Co., for Respondent No.3.
Mr.Pratik Rahade i/b Mr.P. N.Joshi, for Respondent No.4.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

**RESERVED ON : 21st JUNE, 2017
PRONOUNCED ON : 27th JUNE, 2017**

ORDER (PER M.S.KARNIK, J) :

1. The petitioner was appointed as a peon with respondent No.2 – School from 15/07/1993. He was promoted to the post of Naik with effect from 06/11/1995 and is working as such in the secondary section of the respondent -institution. On account of death of one Shri V. M. Patil i.e. the husband of respondent No.4, the post of junior clerk became vacant in the respondent No.2 – School. According to the petitioner, he is the senior most employee having qualification of B.A. and was only qualified person to be promoted to the said post. It is the petitioner's grievance that instead of promoting the petitioner to the said post of the junior clerk, the respondent No.2 – Management appointed respondent No.4 as a junior clerk on compassionate ground.

2. Learned Counsel for the petitioner invited our

attention to the decision of the Division Bench of this Court in the case of **Ramesh Shivram Khairnar Vs. State of Maharashtra and ors. 2003(6) Bom.C.R. 254** to contend that the petitioner being eligible for the post as he is having qualification of B.A., it is the petitioner who should have been promoted to the said post. In the submission of the learned Counsel for the petitioner as the respondent No.4 was to be appointed on compassionate ground, the respondent No.2 – Management could have appointed her in the post of peon.

3. Though prima facie there may be some merit in the submission of the petitioner, we are not inclined to grant reliefs in the facts and circumstances of the present case. Writ Petition is of the year 2000. Respondent No.4 is working in the said post for the last 17 years. Learned Counsel for the petitioner in all fairness on instructions submitted that even the petitioner is hesitant to disturb the appointment of the respondent No.4. He however submitted that he may be considered for appointment to the post of junior clerk if there is vacancy.

4. Learned Counsel for the respondent No.1 – Management- Mr.Shaikh on instructions submitted that as on today there is no vacancy of junior clerk. In response to our suggestion that in future when the post of junior clerk becomes vacant, the petitioner could be considered for promotion to the said post, learned Counsel for respondent No.1 immediately accepted the suggestion. Having regard to these circumstances and fair stand taken by learned Counsel for respective parties, in our opinion, the following order will meet the ends of justice.

ORDER

- i) In the event any vacancy in the post of junior clerk arises, the petitioner preferably may be considered in the matter of appointment/promotion to the post of junior clerk subject to eligibility.

5. Writ Petition is disposed of with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)