

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1129 OF 2016

1. The State of Maharashtra
through the Secretary to the
Government, School Education
and Sports Department,
Mantralaya, Mumbai.

2. The Deputy Director of Education
Mumbai Region, Mumbai,
Jawahar Bal Bhavan, Charni Road,
Mumbai-400 004.

.....Petitioners
(Orig. Respondents)

: V E R S U S :

Mr. Santosh Parshuram Kanthe
R/at : C/109, Sahyog Housing Society,
Kharegaon, Near TMC School,
Kalwa, Thane-400 605.

.....Respondent
(Orig. Applicant)

Mr. Vishal Thadani, AGP for the State, petitioner.

Mr. Gaurav Bandiwadekar i/by. Mr. Bhushan A.
Bandiwadekar, Advocate for the respondent.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATE :- 17th JULY, 2017.

ORAL JUDGMENT (Per :- SMT. V.K. TAHILRAMANI, J) :

1. Heard Learned AGP for the petitioners and Learned Counsel for the respondent.

2. Rule. By consent, rule is made returnable forthwith and the matter is heard finally.

3. The petitioner issued an advertisement on 19th June, 2008 for filling up nine posts of Assistant Project Officers. The respondent's name was in the waiting list which had five names. The respondent was given appointment letter dated 3rd February, 2010 as some persons in the select list did not join. The respondent was granted 15 days time to join.

4. The respondent by letter dated 5th March,

2010 preferred an application for extension of time to join the said post. Two days extension was granted and the respondent had to join on 11th March, 2010. On 17th March, 2010 the respondent preferred another application for extension of time to join the post as he suddenly fell ill. The said application for extension of time was rejected. Hence, the respondent approached the Tribunal. The Tribunal, by order dated 26th February, 2015 allowed the O.A. and the petitioners were directed to allow the respondent to join as Assistant Project Officer within two weeks from the date of the order of the Tribunal. The present petition has been preferred being aggrieved by this order.

5. Though, the letter of appointment was dated 3rd February, 2010 it was received by the respondent on 3rd March, 2010. As the respondent was working in government aided private school as a Teacher, he personally went to the office of the petitioner on 5th March, 2010 and asked for extension of time to join the

post. The petitioner by letter dated 9th March, 2010 granted him two days time to join i.e. 11th March, 2010. It is stated on behalf of the respondent that, on 11th March, 2010 he could not join as he suddenly fell ill, so also his employer did not relieve him. The School where the respondent was working had asked the respondent to complete the evaluation of S.S.C. answer sheets before he could be relieved. Therefore, the respondent had approached various authorities but was not given any extension of time.

6. On behalf the respondent, it was contended that those who were given appointment from the selection list on 31st August, 2003 were allowed 30 days time to join duties, whereas, the respondent was given only 15 days to join the duty. In addition, the candidates from the selection list were informed telegraphically but the respondent was only informed by ordinary post. The respondent has placed on record, the copy of the appointment letter dated 31st August, 2009 issued to one

Ms. C.B. Paradke in which it was stated that, she should join within 30 days, whereas, in the appointment letter of the respondent, it was stated that he had to join within 15 days. The petitioner admittedly took four days from 5th March, 2010 to 9th March, 2010 to give extension of two days to the respondent to join his post. It was admitted by the petitioner before the Tribunal in the communication dated 16th April, 2010 of the School Education and Sports Department that appointment letter sent to nine candidates in the select list were sent by telegram. The telegrams were sent on 11th August, 2009 followed by letter dated 31st August, 2009. The aforesaid letter dated 16th April, 2010, further states that, those who did not join from the selection list were informed on 16th January, 2010 to join within 15 days. It is thus clear that, those who were given appointment by letter dated 31st August, 2009 were given time of around five months to join. Only after 15 days period given by letter dated 16th January, 2010 expired, the persons on waiting list were given appointment and were given 15 days to join by

sending them a letter by ordinary post which letter was dated 3rd February, 2010. The petitioner has not explained the discriminatory treatment meted out to the respondent as compared to the candidates in the selection list. Thus, the claim of respondent that he was discriminated against, stands substantiated.

7. Before the Tribunal, it was contended on behalf of the respondent that, the appointment letter dated 3rd February, 2010 was actually dispatched on 18th March, 2010. The postal stamp is not clear. However, the claim of the petitioner that the letter was actually sent on 3rd February, 2010 is clearly not tenable as the date on the outward register does not prove that the letter was dispatched on that date. It only shows that the letter was dated 3rd February, 2010. The record shows that, in copy of the outward register, only for 3rd February, 2010 the date of dispatch is shown, while regarding entries on other dates, no date of dispatch is shown. Thus, the claim of the respondent that, he received the letter dated

3rd February, 2010 after 15 days time granted in the said letter had expired, appears to be genuine.

8. The respondent has been able to demonstrate that he had been meted out treatment which was arbitrary and discriminatory. Though the petitioner took time from 5th March, 2010 to 9th March, 2010 to grant the extension of time, extension was granted only of 2 days. It was expected that the petitioner would grant reasonable extension of time considering all the facts. However, reasonable time was not granted. There was no reason as to why a reasonable period was not granted to the respondent to join the post.

9. The facts on record, clearly show that the action of the petitioner was arbitrary, discriminatory and highly unreasonable. The Tribunal has taken all these facts into consideration and therefore allowed the O.A. No case is made out for interference. Hence, Rule is discharged. Writ Petition is dismissed.

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WP-1129-2016 (sr.12)

Mon, 17.7.2017

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)