

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

Writ Petition No. 8484 of 2011

Mangala w/o Ananda Mahajan
And Others.

.. Petitioners.

Versus

The State of Maharashtra
And Others.

.. Respondents.

Shri. V.B. Jadhav, Advocate, instructed by Shri. V.D. Hon,
Senior Counsel, for petitioners.

Shri. M.M. Nerlikar, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. R.N. Chavan, Advocate holding for Shri. Vijay
Sharma, Advocate, for respondent No.4.

Shri. M.K. Goyanka, Advocate, for respondent No.5.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 22 February 2018

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed under Article 226 and under Articles 14, 19(1)(g) of the Constitution of India. Direction is claimed mainly against the Municipal Council Jamner, respondent No.4 to give regular appointment on

the establishment of the Municipal Council Jamner. Both the sides are heard.

2) The contentions of the petitioners and the submissions made show that in the year 1993 petitioner No.1 was appointed as Balwadi Shikshika. Petitioner No.2 was appointed in the year 1995 on the similar post but on compassionate ground. Petitioner Nos.3 and 4 were appointed in the year 1989 and petitioner No.5 was appointed in the year 1994. Balwadi was created in the erstwhile village of Jamner. Subsequently this area was converted as Municipal Council Jamner. After creation of Municipal Council, the Municipal Council gave appointments to the petitioners on fixed honorarium. It is the case of the petitioners that the Municipal Council is taking work even of Clerk from them. It is their contention that after creation of Municipal Council as per the proposal made, 136 posts were created for the Municipal Council on which the employees who were working on the establishments of Village Panchayats were to be absorbed. It is the contention that there were posts on which the petitioners also could have been absorbed and appointed

but they were not absorbed. It is contended that only 126 persons came to be appointed.

3) In view of the aforesaid contentions and submissions made for the petitioners, this Court had given direction to the Government to produce on record copy of Government Resolution by which the posts were created for aforesaid establishment. Said Government Resolution dated 28-10-2002 is not produced but the order dated 22 July 2005 issued by the Commissioner and Director, Municipal Administration, is produced on the record and along with that order there is a schedule of the posts created by the Government for respondent No.4 - Municipal Council Jamner and the persons to whom the posts were given. In the same order there is a mention that the Government had made it clear that Balwadi Sevika and Balwadi Peon who were on the establishment of the village panchayat were to be continued on the same scale which they were getting in the past. Copy of order dated 15-7-2005 made by the Commissioner and Director of Municipal Administration is also there in this regard.

4) The submissions made and the reply affidavit filed by the respondents show that after creation of Nagar Parishad option was given to the petitioners to take employment in Anganwadi created in place of Balwadi. This option was not utilized. It appears that the petitioners wanted employment on the establishment of Nagar Parishad and so they continued to accept honorarium and they continue to work on the posts which were not sanctioned for the Nagar Parishad. There is correspondence with the Nagar Parishad and this fact is not disputed by the petitioners and other respondents. There is copy of Government Resolution of Women and Child Development Department dated 15-9-2005 showing that Municipal Councils were expected to start Anganwadi. If in the past for a particular area which was converted into Municipal Council there was Balwadi, the person working in the Balwadi was to be absorbed in Anganwadi if she was possessing necessary qualifications. If she was not possessing necessary qualification then she was to be given appointment as Helper. Balwadis created by the Village Panchayats were to be continued though in the name of Anganwadi. In view of the submissions made

by the contesting respondents that the said posts can still be given to the petitioners this Court holds that the petitioners need to accept those posts if they want any post on the basis of their previous appointments in the Balwadi. It is a Central Government Project and when the Government makes changes in the Project like above, the persons working in the Project need to give option and they can get post only in the new Project which has taken place of the old project. They do not become entitle to get post in other Department much less on the establishment of the local body like Municipal Council. The persons for whom posts were created were working on different posts like Peon, Mazoor, Watchman which were there for discharging duties of the local body. These posts were not of any project like Balwadi or Anganwadi. Thus the case of the present petitioners cannot be compared with the case of other persons for whom the posts were created in the Municipal Council. Thus, the relief claimed by the petitioners cannot be given. In the result, following order:-

5) The petition is dismissed. However, it is made clear that in view of the contents of the affidavits filed by Nagar Parishad, Jamner that the petitioners can be still absorbed in Integrated Child Development Services Scheme (ICDS), if the petitioners want to get absorbed in that Scheme, there will be liberty for the same.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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