

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

WRIT PETITION NO. 12706 OF 2016

Khalil Baig S/o. Noor Baig
Age : 39 years, Occ : Service (Peon),
r/o Naiknagar, Nanded.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Principal Secretary,
Higher Technical Education,
Mantralaya, Mumbai.
2. The Deputy Director,
Higher Education,
Nanded Division, Nanded.
3. The Secretary,
Nanded Education Society,
Nanded.
4. The Principal,
Science College,
Nanded.

..RESPONDENTS

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Shri U.T. Pathan, Advocate for petitioner
Shri S.S. Dande, A.G.P. for respondent/State.
Shri S.V. Natu, Advocate for respondent no.3.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 31.01.2018
Pronounced on : 08.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. This Petition is filed with the following prayers :-

"B) By issuing appropriate writ or directions in like nature the respondent no.2 may kindly be directed to release the salary of petitioner since 2007 to till today.

C) By issuing appropriate writ or directions in like nature the respondent no.2 may kindly be directed to absorb and treat the services of the petitioner in open category."

3. Learned counsel appearing for the petitioner submits that, initially the petitioner was appointed on adhoc basis in the year 1998. Thereafter, pursuant to the advertisement, since the petitioner belongs to V.J.N.T. Category, applied from the same category. According to learned counsel appearing for the petitioner, the petitioner is appointed on regular basis pursuant to the said advertisement. However, the petitioner's salary from February, 2007 is not paid to him. It is submitted that, though he appeared before the Caste Scrutiny Committee, the Committee never communicated him the decision, and therefore, he could not submit the caste validity certificate. Learned counsel invites our attention to the representation given by the petitioner on 26th October, 2015, requesting to release arrears towards salary. It is submitted that, various representations have been made to the Deputy

Director of Education on 6th November, 2015, 13th June, 2016 and 26th July, 2016. The petitioner is working almost for 18 years, either on temporary daily wages basis or on regular basis and his services are continued, even then his salary is not being paid regularly. Therefore, learned counsel appearing for the petitioner submits that, the Petition may be allowed.

4. On the other hand, learned A.G.P. appearing for Respondent/State, relying upon the affidavit in replies filed by Respondent Nos.1 and 2, submits that, the petitioner was appointed on the post of Peon on 27th February, 2004 from Vimukta Jatis category. In his appointment letter itself, it is clearly mentioned that he should submit the caste validity certificate within three months from joining, failing which his services will be discontinued. Despite the

notices sent to the petitioner on 11th August, 2005, 8th November, 2006, 12th June, 2009 and 15th December, 2008, asking the petitioner to submit his caste validity certificate, the petitioner did not submit the caste validity certificate. It is submitted that, the petitioner has not submitted the said caste validity certificate till date and he himself is responsible for delay in getting his wages/salary for the period for which he has rendered the services as a Peon. It is submitted that, it was responsibility of Respondent No.4 – Principal to ensure that the caste validity certificate is submitted by the petitioner. It is submitted that, the petitioner tendered resignation on 7th October, 2009 since he could not submit the caste validity certificate and therefore, his prayer to absorb him from open category cannot be considered.

5. Learned counsel appearing for Respondent No.3 submits that, the petitioner was appointed on the post of Peon from V.J. Category on 7th January, 2004. His services were approved by the Joint Director, Higher Education, Nanded on 25th June, 2004 subject to submission of Caste validity certificate by him. Thereafter, various letters were issued to the petitioner to submit the caste validity certificate, but he failed to submit the same. It is submitted that, since the petitioner did not get the caste validity certificate, therefore, he himself has given resignation on 7th October, 2009 and thereafter, the petitioner has been working on daily wages basis with Respondent No.4. It is submitted that, the petitioner has been paid wages from time to time. Thereafter on 1st June, 2013, the Principal transferred the employees, who are working on daily wages to the permanent and vacant post of non-teaching

employees on grant-in-aid basis. Thereafter, Respondent No.3 on 29th May, 2013 sent proposal to Respondent No.2 for approval to post of transferred employees from daily wagers to aided posts, but the Respondent No.2 by its letter dated 10th January, 2014 rejected the said proposal stating that, there is no provision for transfer the daily wagger to aided posts. Thereafter, Respondent No.3 vide letters dated 8th August, 2015 and 14th December, 2015 informed the petitioner and Respondent No.4 that, the transfer on the grant-in-aid posts is illegal and therefore, the same stands cancelled.

6. It is submitted that, the petitioner earlier filed the Petition, however, the same was rejected on 26th November, 2015 and the prayer of the petitioner to transfer him to the vacant post of peon in aided school was turned down. It is submitted that, in the

facts situation, which have been stated hereinabove, and the fact that, the petitioner on his own resigned on 7th October, 2009 from the post of Peon and thereafter worked on daily wages, he is not entitled for any relief as claimed for.

7. We have considered the submissions of learned counsel appearing for the petitioner, learned A.G.P. appearing for Respondent/State and learned counsel appearing for Respondent No.3. We have carefully considered the contents of the representations given by the petitioner and also replies filed by the respective Respondents.

8. This Petition raises various disputed questions of facts, and therefore, it would not be appropriate for this Court to undertake exercise of disputed questions of facts. In that view of the matter, we direct

Respondent No.2 to consider the grievance raised by the petitioner in the present Petition and also in his representations submitted by him with the said Authority, as expeditiously as possible, and preferably within three months from today.

9. Respondent No.2 shall issue notices to the petitioner and also to Respondent Nos.3 and 4, and after affording them opportunity of hearing and also allowing them to submit the documents in support of their claim, shall take final decision within stipulated period, as indicated above.

We make it clear that, we have not expressed any opinion on merits of the contentions raised by the parties in this Petition or in the replies filed by the Respondents, and it is for Respondent No.2 to take appropriate decision on its own merits and in accordance with law.

10. In case, the petitioner's claim is found genuine, in that case, it will be open for Respondent No.2 to issue appropriate directions to the concerned Authorities for compliance of such directions, including the claim of the petitioner about non-payment of salary/wages for the period for which he has rendered the services in the past with Respondent Nos.3 and 4. Till the decision is taken by Respondent No.2 and in case the petitioner is in the employment of Respondent Nos.3 and 4, Respondent Nos.2 to 4 shall maintain status-quo as on today as to the employment/services of the petitioner.

11. With the above observations, the Writ Petition stands disposed of. Rule made absolute in above terms.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE