

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4086 OF 2015

The General Education Institute & Anr. ...Petitioners
V/s.

The Joint Director (Vocational Education)
& Others ...Respondents

Mr.R.S. Apte, Senior Advocate i/by Mr.A.A. Garge for the Petitioner.
Mr.A.I. Patel, AGP for Respondent No.1 to 3 and 5.

**CORAM : B.R. GAVAI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 10th APRIL 2018

JUDGMENT : (Per Smt.Bharati H. Dangre,J.)

1. Rule. Rule made returnable forthwith.
2. Heard by consent.
3. The petitioner No.1, a registered Public Trust and the petitioner No.2 an employee appointed by the said trust as Junior Clerk, have invoked the Writ jurisdiction of this Hon'ble Court praying for quashing and setting aside the impugned order dated 12-02-2015 issued by the Joint Director (Vocational Education, Mumbai). A direction is also sought to the Respondent Nos.1 to 5 to grant approval to the proposal and representation dated 29.03.2012 for grant of NOC for appointment of petitioner No.2

with effect from 14.02.2012.

The aforesaid relief is sought in the backdrop of the facts, which are culled out in the subsequent paragraph.

4. The petitioner No.1 is a public Trust and it has started a course in Vocational Education and training namely “Electronic Technology” and “Accounting and Auditing” respectively from the academic year 1990-1991 and 1993-1994 after obtaining due permission from the State Government. The junior college run by the petitioner No.1, one Smt.PM. Sanap was working as a Junior Clerk and she came to be promoted to the post of Senior Clerk in the secondary section. On her promotion, the post of Junior Clerk, which she was occupying fell vacant. It is specific contention of the petitioner No.1 that while effecting the said promotion, the due procedure was followed and the respondent No.1, granted no objection for the said promotion.

In order to fill up the post of Junior Clerk, the petitioner No.1 initiated the process of selection by publishing an advertisement inviting applications for the post of Junior Clerk from the eligible candidates. The said advertisement was published in the daily news paper “Nav Shakti” dated 04.12.2012. The list of candidates was also called from the District Employment Officer in

the District Employment Office, Thane and names of 17 candidates were forwarded. It is specific case of the petitioner No.1 that call letters were issued to the said candidates and they were interviewed on 11.12.2001. In pursuance of the said selection process, petitioner No.2 who was duly qualified, come to be selected and was appointed as Junior Clerk by resolution dated 11.02.2012. The petitioner No.2 resumed her duties as Junior Clerk with effect from 14.02.2012.

5. The petitioner No.1 thereafter forwarded the proposal for approval of appointment of petitioner No.2 as Junior Clerk to the respondent No.3 by letters dated 03.11.2012 and 27.11.2012. According to the petitioner No.1 the respondent No.3 orally communicated about want of NOC from their office prior to appointing the petitioner No.2. The petitioner No.1 therefore made repeated representation to the respondent No.3 for issuance of NOC, however the said issue was kept pending. The petitioner No.1 once again forwarded the proposal seeking approval to the appointment of petitioner No.2 by letter dated 27.08.2012 with all necessary documents. Repeated requests were made to confirm the approval infavour of petitioner No.2. The petitioner No.1, on 22.02.2014 again made an application and requested the respondent No.3 to

look into the matter and to grant approval with retrospective effect as the petitioner has complied with all other requirements except the NOC from the office. However, a letter was received from respondent No.3 only on 19.07.2014, wherein it was stated that the approval cannot be granted to the appointment of petitioner No.2 since it lacks the NOC from the Regional office. Not only this, the respondent No.3 intimated the petitioner No.1 that one Smt.Savita Dilipkumar Phanse be appointed against the vacancy available with the petitioner No.1 in the post of Junior Clerk and to submit the proposal for approval of his appointment.

It is this communication, which is assailed in the present petition.

6. The learned Senior Counsel Mr.Ram Apte, appearing for the petitioners would submit that the post of Junior Clerk had fallen vacant, which was required to be filled in, on promotion of Smt.P.M. Sanap, who came to be promoted after obtaining NOC from the respondent. According to the learned counsel for the petitioners an advertisement was published and applications were invited and after following the entire procedure for selection, the petitioner No.2 came to be appointed since she was found to be qualified to hold the post of Junior clerk. According to the learned counsel, she was

holding the post of Junior Clerk since 14.02.2012 and in respect of the NOC being sought, a blind eye was turned to the request of petitioner No.1. It is further submitted that the petitioner No.1 had every right to fill in the vacant post so as to manage to run the school and inaction on the part of the respondent No.3 not to consider the proposal requesting NOC for the period of approximately two years had reflected mere negligence in discharge of duties. The learned counsel would submit that at the most not seeking a NOC would amount to irregularity since the entire procedure for filling up the post was followed. He would also submitted that the petitioner No.2 was appointed on an isolated post and therefore there is no question of implementing the reservation policy. In such circumstances, the learned senior counsel would submit that the act of the respondents in directing the petitioner No.1 to accommodate the respondent No.4 on the post of Junior Clerk, is not sustainable. He would also submit that in any contingency, respondent No.4 refused to join the said post, resultantly petitioner No.2, till date is holding the said post.

7. As against the said contention, the learned AGP relied on the reply affidavit filed by the Joint Director Vocational Education and Training, Bandra, Mumbai, i.e. respondent No.1 on

24th February 2016. The learned AGP would submit that the petitioner No.1 had not applied for NOC in terms of Section 5(1) of the MEPS Act, 1977 and in terms of the government resolution dated 06.02.2012. He would submit that in absence of such prior permission taken by the petitioner No.1 to fill in any vacant post, there is no question of accepting said proposal and granting approval to such an appointment effected by petitioner No.1. The learned AGP slammed the said appointment as back door entry.

8. On perusal of the record, it is apparent that when the post of junior clerk fell vacant on 01.08.2011 on account of promotion of the holder of the said post, the matter was referred to the respondent No.3 and all the details of the roster point as well as the details about non-availability of the candidate on compassionate basis was submitted. The record further reveals that from 05-12-2012 there is constant correspondence made by the petitioner No.1 with the respondent No.3 i.e. District Officer (Vocational Education and Training) as well as the respondent No.1 for grant of approval to the appointment of petitioner No.2. It is also seen that on 05.10.2012 the respondent No.3 forwarded the communication received by him from the petitioner No.1 to the Joint Director, with a recommendation to grant permission to fill up

the said post. However, it appears that the respondent No.1 did not take any cognizance of the said correspondence and on 19.07.2014, rejected the proposal forwarded by petitioner No.1 seeking approval to the appointment of the petitioner No.2 on the ground that the NOC has not been obtained. By the impugned order passed on 12.02.2015, the respondent No.1 directed the petitioner No.1 to appoint the respondent No.4, whose name was found in the waiting list of the compassionate appointees.

9. The respondent No.3 did not bother to respond to the request made by the petitioner No.1 for grant of no objection for filling up the post of the junior clerk for considerable period of time, though the proposal was forwarded in the year 2012. Till the year 2014 no cognizance was taken by respondent No.3 of the said proposal/representations forwarded by the petitioner and ultimately the approval to the appointment of the petitioner No.2 came to be rejected on 19.07.2014 on a flimsy ground that the no objection certificate from respondent No.3 was not obtained.

It can thus be seen that for the fault of the respondents, petitioner Nos.1 and 2 are suffering and petitioner No.1 could not keep the post of Junior clerk vacant for a long time and it is not the case of the respondents that the procedure of issuing advertisement

and calling applications from the public and considering the candidature on merits was not followed by the petitioner No.1. The respondents authority are only hyper technical ground of rejection is totally frivolous ground and do not deserve any consideration since the respondents cannot to permitted to take advantage of their inaction of not forwarding proposal to the petitioner No.2.

In any contingency the respondent No.4 did not join the said post and petitioner No.2 is working on the post of the Junior Clerk. There is no break in service of the petitioner No.2 and she is duly qualified to hold the post. In such circumstances the impugned order dated 12.02.2015 directing the petitioner No.1 to absorb the respondent No.4 on the post of Junior clerk and forward a proposal to that effect for approval cannot be sustained and it is liable to be quashed and set aside. The petitioner No.1 is entitled for the approval to the appointment of the petitioner No.2 as Junior clerk with effect from 14.02.2012.

10. Rule is made absolute. The impugned order dated 12th February 2015 is quashed and set aside.

Respondent Nos.1 to 3 are directed to grant approval to the appointment of petitioner No.2 as Junior Clerk with effect from 14th February 2012 and the arrears due to the petitioner No.2 be paid

within a period of six months from today.

(SMT.BHARATI H. DANGRE, J.)

(B.R. GAVAI, J.)