

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

WRIT PETITION NO.4261 OF 2018

Ashok s/o. Narayan Bhalerao,
Age: 39 years, Occ. Services,
r/o. At Rajapur (Jamb),
Tq. Aundha, Dist. Hingoli ..Petitioner

Vs.

The State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
and others ..Respondents

Mr. R.J.Nirmal, Advocate for petitioner
Mr. A.B.Chate, AGP for respondent no.1
Mr. S.B.Pulkundwar, Advocate for respondent nos.2 and 3
Mr. S.R.Dheple, Advocate for respondent no.4

**CORAM : R.G. AVACHAT, J.
RESERVED ON : OCTOBER 03, 2019
PRONOUNCED ON : OCTOBER 15, 2019**

ORDER :-

Heard.

2. The challenge in this Writ Petition is to the order dated 21.12.2017 passed by the Block Development

Officer, rejecting the petitioner's appeal and order dated 31.03.2018 passed by the Deputy Chief Executive Officer (Dy. CEO), Zilla Parishad, Hingoli, confirming the decision of the BDO.

FACTS :-

3. The petitioner is a resident of village Rajapur (Jamb), Tq. Aundha, Dist. Hingoli. He claimed to have been appointed as a Water Supply Assistant with effect from 01.09.2011 at a honorarium payable as per the Government Rules. After the Grampanchayat elections in 2015, a new body came into power. The village Sarpanch, vide communication dated 23.12.2016, made a complaint to the Block Development Officer (BDO), contending that the petitioner tried to grab honorarium and nobody was working as a Water Supply Assistant for over one year.

4. The BDO, by his first order dated 24.04.2017, informed the Gramsevak, Village

Panchayat, Rajapur, that the petitioner had not served as Water Supply Assistant, since 2011. The appointment of the petitioner was found to be illegal and doubtful. The Grampanchayat was, therefore, directed to take appropriate action in terms of Section 61 of the Maharashtra Village Panchayat Act, 1953 ("the Act", for short).

5. The petitioner preferred an appeal against the said order. The Dy. CEO, by his order dated 20.07.2017, partly allowed the appeal with a direction to the BDO to give the petitioner hearing and then pass order.

6. The BDO enquired into the complaint and found the petitioner's appointment to be illegal. The petitioner again preferred an appeal against the said order. The Dy. CEO upheld the order passed by the BDO on 21.12.2017. This is how, the petitioner is before this Court.

7. Mr.Nirmal, learned Counsel for the petitioner, would submit that the appointment of the petitioner has been made after following the due procedure. If services of the petitioner were to be terminated, the powers vests in a Panchayat. The village panchayat has not passed any order dismissing the petitioner from the employment of the village panchayat. The impugned orders are, therefore, inconsistent with the provisions of Section 61 of the Act and therefore, liable to be set aside.

8. Learned Counsel representing respondent nos.2 to 4 and learned AGP representing the respondent no.1 supported the impugned orders.

9. There is on record a proclamation dated 01.08.2011, inviting applications for the post of Water Supply Assistant. There is also on record a copy of extract from the proceedings of the meeting dated 27.08.2011. The same indicates that vide

resolution bearing no.5, the petitioner came to be appointed as Water Supply Assistant.

Further record, however, runs counter to the claim made by the petitioner. It is surprising that pursuant to the proclamation inviting application for the post of Water Supply Assistant, only one application was received and that too, of the petitioner. There is no record to indicate the petitioner to have, in fact, served with the village panchayat and has been paid some honorarium therefor. The BDO made a detail enquiry into the complaint. The report indicates that since the date of appointment of the petitioner, the petitioner's name did not figure in the attendance registered. On examination of the pay bill, name of one Datta Narayan Bhalerao appeared. He has been paid honorarium/salary.

10. The name of the petitioner did not figure in any of the salary bills. First time in 2016, the

village panchayat made a proposal/demand for grants for being paid to the petitioner as his salary. Shri.A.S.Rathod, the then Gramsevak, stated that he was serving with the very Grampanchayat in 2014. During his tenure, the petitioner had never given his services as Water Supply Assistant. The order of appointment of the petitioner does not bear seal of the village panchayat. No approval for the petitioner's appointment had been sought from the panchayat. As per Rule 4 of the Grampanchayat Employees (Condition of Services) Rules, 1960, the minimum educational qualification is passing of 7th standard examination. The service book of the petitioner contain only one entry indicating that he was a drop-out of 5th standard. Moreover, as per the census of 2011, the population of village Rajapur was 1002. As per the Government Resolution dated 21.01.2002, only two posts were permissible for the Grampanchayat.

11. In short, although there is an order indicating the petitioner to have been appointed as Water Supply Assistant with effect from 01.09.2011, there is no record indicating him to have served on the said post. The petitioner does not have requisite qualification for being appointed to the said post. His name does not figure either in the attendance register or on the muster roll. Had the petitioner really worked on the post, he would have urged for his honorarium/salary. No record is forthcoming to indicate the petitioner to have ever asked for payment of his honorarium/salary.

12. The record shows that for the first time in 2016, the Gramsevak made a proposal for sanction of grant for payment of the petitioner's salary. When the proposal was made, the Gramsevak was not serving as Gramsevak of Rajapur village panchayat. On enquiry, he was, *prima facie*, found to have involved in the dereliction of duty. As such, the appointment

order dated 01.09.2011, is found to be invalid and illegal one. The petitioner, therefore, could not be heard to say that his appointment can only be terminated by the village panchayat. It is reiterated that mere an appointment letter sans evidence, indicating the petitioner to have been serving, does not give the petitioner any right to the post. The order passed by the BDO and upheld by the Dy. CEO are found to be consistent with the material on record.

13. No interference is warranted with the impugned orders. The petition, therefore, fails. The same is dismissed.

[R.G. AVACHAT, J.]

kbp