

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7782 OF 2018

PRAMOD NAMDEORAO LOKHANDE

...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr. M.C. Syed, Advocate for Petitioners
Mr. P.S. Patil, Additional Government Pleader
for Respondents-State:
Mr. L.H. Kawale, Advocate for Respondent No. 5

WITH
WRIT PETITION NO. 7621 OF 2014

PRAMOD NAMDEORAO LOKHANDE

...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr. M.C. Syed, Advocate for Petitioner
Mr. P.S. Patil, Additional Government Pleader
for Respondents-State
Mr. K.J. Suryawanshi, Advocate for Respondent No. 3
Mr. S.S. Dambe, Advocate for Respondent No. 6

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 19th SEPTEMBER, 2019

ORAL ORDER:

1. In writ petition No. 7621 of 2014, the petitioner seeks directions against the respondent to appoint the petitioner on Class-III post i.e. Clerk in respondent No. 5 school. In writ petition No. 7782 of 2018, the petitioner is challenging the approval granted in favour of respondent No. 5 to the post of Junior Clerk.

2. Mr. Syed, the learned Counsel for petitioners submits that at the time, when the petitioner was appointed on compassionate ground, the petitioner was eligible to be appointed on Class-III post. However, the vacancy at the relevant time was not available of Class-III Post, the petitioner was appointed on Class-IV post. Subsequently, the vacancy arose. However, instead of appointing petitioner on Class-III post, the management appointed the respondent No. 6 of writ petition No. 7782 of 2018 on Class-IV post. The same is illegal. The petitioner relies on the Government Resolution dated 31st December, 2002, more particularly, clause 4 (d) of Annexure-A.

3. Mr. Suryawanshi, the learned Counsel for the institution submits that the petitioner did not submit the application for appointment on compassionate ground within the limitation. The father of the petitioner died in the year 1989. The application was made by the petitioner in 2004, still the management considered

sympathetically the application of the petitioner. The appointment order of the petitioner did not suggest that the petitioner would subsequently be considered for the post of Junior Clerk as and when the vacancy would arise. The learned Counsel refers to clause 10 of the Annexure-A to the Government Resolution dated 31st December, 2002.

4. We have considered the submissions. We are not entering to the dispute as to whether the application filed by the petitioner for appointment on compassionate ground was within the limitation.

5. It is not disputed that at the time when the petitioner was appointed on Class-IV post, the petitioner was possessing the qualification to be appointed on Class-III post, but at the relevant time, the vacancy did not exist for Class-III post. As such, the petitioner was appointed as a Peon. It also appears that the petitioner went on hunger strike and because of that, management gave assurance to the petitioner that the petitioner would be considered in Class-III post, of course that was also an act of coercion on the part of the petitioner.

6. Clause 4(d) of Annexure-A to the Government Resolution dated 31st December, 2002 would enure to the benefit of the petitioner. The candidate if was possessing the qualification to be appointed on Class-III post, and because of the unavailability of the

post at the relevant time, he is appointed on Class-IV post, he can be considered for appointment on Class-III post as and when vacancy arises.

7. We are also not inclined to disturb the persons already working on Class-III post as on the date.

8. As and when the vacancy would exist for Class-III post, the respondent-management shall consider the petitioner for promotion to the post of Class-III commensurate to his qualification.

9. With these observations, the writ petitions are disposed of.
No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

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