

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7103 OF 2018

DEVIDAS RAMDAS NERKAR
VERSUS
THE CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD,
NANDURBAR AND ANOTHER

...

Advocate for Petitioner : Mr. Shelke Avishkar S.
Advocate for Respondent No. 1 : Mr. A. S. Savale
AGP for Respondent No. 2 : Mrs. G. L. Deshpande

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CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.

DATE: 11th NOVEMBER, 2019

PER COURT:

1. Mr. Shelke, learned counsel for the petitioner submits that the petitioner joined as a 'Junior Draftsman' in the year - 2003 with the Zilla Parishad. On or about 30.08.2014, Notification was issued by the State Government thereby amending the Maharashtra Zilla Parishad District Services (Recruitment) (3rd Amendment) Rules, 2014 by virtue of the said amendment the person who have passed one year Civil Engineering Assistants course or its equivalent course were entitled to be absorbed as Civil Engineering

Assistant, if these persons are willing to work as Civil Engineering Assistants irrespective of their cadre and post to the Zilla Parishad. The petitioner is absorbed as Civil Engineering Assistant on 29.05.2017 prior to that date the petitioner was never made aware of his right to be absorbed as Civil Engineering Assistant. The petitioner possesses equivalent qualification of Civil Engineering Assistant.

2. Mr. Savale, learned counsel for the respondent / Zilla Parishad submits that within one and half month of the petitioner giving his consent for being absorbed as Civil Engineering Assistant, the petitioner was absorbed as Civil Engineering Assistant. There has been no delay on the part of the Zilla Parishad.

3. It appears that the petitioner had approached the Commissioner against the order of the Zilla Parishad absorbing him from May-2017. The petitioner claimed that he be absorbed from the date of the Notification dated 30.08.2014.

4. The Notification dated 30.08.2014 makes amendment to the Maharashtra Zilla Parishad District Services (Recruitment) 3rd amendment Rules, 2014. The relevant part reads thus-

“...
(iii)

persons who are in the service of Zilla Parishads in the State as on the 2nd February 2006 who have passed the Civil Engineering Assistants one year course examination or acquired any equivalent qualification at the time of issuance of the notification conducted by the Government Technical Institute of the Technical Education Department of the Government, shall be absorbed as Civil Engineering Assistant, if they are willing to work as Civil Engineering Assistant irrespective of their cadre and post in the Zilla Parishad.”

5. The Commissioner has negatived the application filed by the petitioner on the ground that the deemed date cannot be given referring to the Government Resolution of the year 2002.

6. It appears that there was some misconception amongst the parties. Even the prayer made by the petitioner in the appeal was faulty. In fact, according to the learned counsel for the petitioner, the petitioner was claiming the deemed date of absorption as a Civil Engineering

Assistant. The Commissioner was expected to decide as to whether the petitioner is required to be absorbed as on the date of Notification or in the year 2017 after receiving the consent.

7. As the Commissioner has not taken any decision upon it, we set aside the order of the Commissioner and direct the Commissioner to take decision upon the application / appeal of the petitioner considering that the petitioner is claiming the deemed date of absorption as a Civil Engineering Assistant. The same shall be decided expeditiously and preferably within a period of four (04) months.

8. Writ Petition stands disposed of accordingly.
No costs.

[MANGESH S. PATIL, J.] [S. V. GANGAPURWALA, J.]

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