

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

**WRIT PETITION NO. 8054 OF 2018
WITH
CIVIL APPLICATION NO. 14314 OF 2018**

Shilpa D/o Shrikisanji Jethliya,
Age – 39 years, Occu.- Service,
R/o Vipra Nagar, Near Rajasthani
School, Mahesh Chowk, Beed, Dist.
Beed.

....PETITIONER

VERSUS

01. The State of Maharashtra,
through its Secretary, Rural
Development Department,
Mantralaya, Mumbai-32.
02. The Divisional Commissioner,
Aurangabad, Dist. Aurnagabad.
03. The Chief Executive Officer,
Zilla Parishad, Beed, Dist. Beed.

....RESPONDENTS

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Advocate for the Petitioner :- Shri S. D. Tawshikar
Advocate for Respondent Nos. 1 and 2 :- Shri S. R. Yadav -
Lonikar
Advocate for Respondent No. 3 :- Shri V. M. Chate

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 6th FEBRUARY, 2019.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order dated 10/07/2018 passed by respondent No.2, as well as, the order dated 14/06/2018 passed by respondent No. 3, by which, the demotion of the petitioner has been sustained.
3. The petitioner is undisputedly a physically challenged person, who suffers from low vision, since her birth, to the extent of 40 %. She has taken education in the arts faculty and has also acquired the degree of Bachelor of Laws. On 12/10/2006, she was appointed by respondent No. 3 - the Chief Executive Officer, Beed on the post of Senior Accounts Clerk which, according to the petitioner, was reserved for a low vision candidate. There is no dispute that the petitioner has appeared in the selection process and was selected by a committee of experts. She was appointed after the said committee recommended her selection and appointment which was accepted by respondent No.2.

4. The petitioner claims to have passed a departmental examination in 2008 and on the basis of such result, she was held qualified to be appointed to the post of Junior Accounts Officer. She joined the said post and continued to perform her duties. On 25/04/2017, she was selected on the basis of her general seniority to be promoted to the post of Assistant Accounts Officer. There is no dispute that she has performed her duties and the employer has no grievance about the quality of her service.

5. By order dated 14/06/2018, the third respondent - employer demoted the petitioner by citing the reason that her selection as an Assistant Accounts Officer by way of promotion by the committee in-charge of scrutinizing candidates for such promotion was illegal and hence, she could not have been promoted. Consequentially, she was demoted from the position of Assistant Accounts Officer to the position of Senior Accounts Clerk (Assistant Accounts). She has thus being reverted to a different position other than on which she was first selected and appointed on 12/10/2006. Besides this

solitary reason, there are no details set out in the order of demotion, by which, it could be concluded that respondent No. 3 has investigated and noticed any serious illegality in the appointment of the petitioner.

6. The petitioner had approached the learned Division Bench of this Court in Writ Petition No. 6120/2018, which was disposed of by order dated 20/06/2018 concluding that she has a statutory remedy available in preferring an appeal.

7. The petitioner, therefore, preferred an appeal before the Divisional Commissioner, Aurangabad - respondent No.2. By the order dated 10/07/2018, it was concluded that the appointment of the petitioner as Junior Accounts Officer was against the G.R. dated 14/01/2011 and her disability would not be covered by the said G.R. It, however, further concluded that her promotion was of a temporary nature *insofar* as the position of Assistant Accounts Officer is concerned and, therefore, she was held to be ineligible. It was also concluded that the error committed by the Selection Committee has been corrected.

8. The learned Advocate for respondent No. 3 - Zilla Parishad relies upon the affidavit in reply filed by Vaijyanath s/o Bhojaji Avhad, who is a Accounts Officer in the Zilla Parishad, dated 07/09/2018. It is contended that the petitioner had produced a certificate of the medical board indicating her deformity and the said certificate indicated that she was short of vision up to 75 %. The petitioner was promoted to the post of Junior Accounts Officer in Class-III category on account of the vision impairment by order dated 16/11/2012. It is further stated that she was given the promotion to the post of Assistant Accounts Officer on 25/04/2017 as a temporary promotion and on the condition that she can be reverted at any time without any notice.

9. The affidavit further states that one Mr. Ashok Kachru Athwale, member of a local level District Government Coordination Committee has lodged a complaint to the Handicap Welfare Tribunal/Commissioner, Pune stating that the petitioner is not qualified to be selected to the position on which she was appointed. The Commissioner directed

respondent No. 3 to enquire into the matter and take necessary action.

10. It is then stated that the G.R. dated 14/01/2011 does not identify reservation for the low vision category which is commonly known as blind handicap category. It was, therefore, concluded that the promotion of the petitioner on 14/01/2011 cannot be justified and hence she was reverted to the position of Senior Assistant (Accounts).

11. An interesting feature emerges from the action of the respondents. The petitioner undisputedly was selected to the position of Senior Accounts Clerk on 12/10/2006. Now it is contended that this position was never available for a candidate with visual impairment. It is then stated that the Junior Assistant (Accounts), Senior Assistant (Accounts) and Junior Accounts Officer are also not available for the candidates with visual impairment. Despite this being the position, the petitioner is now reverted to the post of Senior Assistant (Accounts) which according to respondent No.3 is also not available for a candidate with visual impairment. It is,

therefore, quite intriguing that if the petitioner is not eligible to work on any of these posts, how could respondent No.3 demote her and put her to the lowest position to which she was selected in 2006 when even that post is not available to the petitioner as it is not earmarked to a candidate with visual impairment.

12. It cannot be ignored that the petitioner, after being appointed on the post of Senior Accounts Clerk on 12/10/2006, has worked satisfactorily for six years. She then appeared for her departmental examination and upon being selected for promotion, she was promoted to the post of Junior Accounts Officer on 16/11/2012. Even on this position, she worked satisfactorily for a period of five years and then was held eligible for promotion on the basis of her seniority to the position of Assistant Accounts Officer.

13. The learned Advocate for respondent No.3 employer puts forth an astonishing submission, on instructions, by placing reliance upon *Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and*

Full Participation) Act 1995 (1 of 1996), that as the petitioner is a handicapped person, the establishment has found an alternate employment for her. It is apparent that respondent No.3 has lost sight of the fact that Section 33 pertains to reservation of posts and Section 32 pertains to identification of posts for reservation. These provisions can be invoked only when the government desires to reserve certain positions at the time of recruitment.

14. In this backdrop, the learned Advocate for the petitioner relies upon **Section 20 of the Rights of Persons with Disabilities Act, 2016** and contends that a government establishment is restrained from discriminating against any person with disability and such government should have regard to the type of work carried on in any establishment or exempt any establishment from the provisions of this Section. Reliance is also placed upon Sub-section (3) of Section 20 that no promotion shall be denied to a person merely on the ground of disability.

15. I find it to be significant that even if it is presumed that

the petitioner was selected in 2006 to the post of Senior Accounts Clerk on the basis of her disability which may sound to be an irregular appointment, the fact remains that she has now worked for more than 11 years. There is admittedly no complaint about her performance on the positions occupied by her or her qualifications. It also cannot be disputed that she passed her departmental exams and was promoted to the post of Junior Accounts Officer on 16/11/2012.

16. In view of the law laid down by the Honourable Apex Court in *State Of Karnataka and others vs. Umadevi and others, 2006(4) SCC*, the petitioner has settled in her employment and it is nobody's case that her selection was illegal or irregular. She had participated in the entire selection process of 2006 and was duly selected for appointment by considering her disability.

17. Respondent No. 3 relies upon the judgment of the Honourable Apex Court in the matter of *Union of India and Anr. vs. National Federation of the Blind and Ors. 2013 AIR SCW 5655* which led to the Honourable Apex Court directing

the Union of India to ensure proper reservation for persons with disabilities and has actually restrained the government from discriminating against the disabled candidates and to identify the posts so as to accommodate candidates with disabilities.

18. I find that the said judgment does not assist respondent No.3, *inasmuch as*, respondent No. 3 seems to have acted upon a complaint filed by a member of some local coordination committee after the petitioner had put in 11 years in employment. Respondent No. 3 has resorted to a drastic action and that too without issuing any notice to the petitioner, without giving her an opportunity of hearing and without resorting to any investigation in which the petitioner can be said to have participated. Moreover, the petitioner could not have been made to suffer such unsustainable action in the face of the fact that she had passed her departmental exams and had earned the promotion in 2012 as a consequence of which she gained seniority and was promoted to the post of Assistant Accounts Officer in 2017, not on the basis of any visual impairment.

19. In view of this above, this petition is allowed in terms of prayer clause-B which reads as under :-

"B) To quash and set aside the order with File No. 2018/DB/Appeal/SL/78 dated 10-07-2018 passed by the respondent No.2 as well as the order No. वित्त/आस्था १/कावि ३८९/२०१८ dated 14/06/2018 passed by the Respondent No. 03, by issuing the writ of Certiorary or any other writ or order."

20. The petitioner shall stand reinstated to the position of Assistant Accounts Officer with effect from the date of her demotion with all incidental and consequential basis.

21. Rule is made absolute in the above terms.

22. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-