

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2356 OF 2018
WITH
CIVIL APPLICATION NO. 5261 OF 2019

PRATIBHA NIKETAN EDUCATION
SOCIETY THROUGH ITS GENERAL
SECRETARY S. D. MAHAJAN
AND OTHERS

...PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr. S.M. Kulkarni, Advocate for Petitioners
Mr. P.S. Patil, Addl. G.P. for Respondent Nos. 1 to 3

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

DATE : 9th OCTOBER, 2019

ORAL ORDER:

1. The petitioners seek directions to grant approval to the appointment of petitioner No. 3. The proposal seeking approval to the appointment of the petitioner No. 3 is rejected on the ground that the petitioner No. 3 on the relevant date, was over aged.

2. Mr. Kulkarni, the learned Counsel for the petitioners submits that the petitioner No. 3 was working with the petitioner Nos. 1 and 2 since the year 2010 on daily wages. By following due selection process, the petitioner No. 3 was selected and appointed

as a Laboratory Attendant (Class IV) on 10th September, 2013. According to the learned Counsel, subsequently, Government Resolution has been issued on 25.04.2016 enhancing the age to 38 years. The learned Counsel submits that the petitioner No. 3 be given the benefit of the same. It is only on the ground that the petitioner No. 3 is over aged, the proposal for approval is rejected.

3. Mr. Patil, the learned Additional Government Pleader submits that the Government Resolution dated 25.04.2016 is prospective in nature. The same does not have retrospective operation. According to the learned A.G.P., there are no powers of relaxation with the authority. The impugned order is rightly passed.

4. Mr. Kulkarni, the learned Counsel on instructions submits that the petitioner No. 3 would not claim salary till this date.

5. It appears that the petitioner No. 3 was working with petitioner No. 1 and petitioner No. 2 since the year 2010 on daily wages. After following due process, the petitioner No. 3 was selected and appointed as Laboratory Attendant on 10th September, 2013. Admittedly, on 10th September, 2013, the petitioner No. 3 was aged 33 years and was over aged. It is only on 25.04.2016, the Government Resolution has extended the upper age limit to 38 years. On 25.04.2016, the petitioner No. 3 was within the age of 38 years.

6. In normal course, we would certainly not have given benefit to the petitioner No.3. However, considering the fact that the petitioner No. 3 was working since the year 2010 with the petitioner Nos. 1 and 2 on daily wages and was duly selected by following due selection process as contended and further the petitioner No. 3 has also shown *bona fides* by not asking for any payment of salary. So also, considering the fact that upper age limit has been extended to 38 years as per the Government Resolution dated 25.04.2016 and the petitioner No. 3 was within that age on the said date of resolution, we are exercising our equitable jurisdiction.

7. For all the aforesaid reasons, we direct the respondents to consider the appointment of the petitioner No. 3 as if made out on 25.04.2016. His services shall be considered from 25.04.2016. The respondents shall consider the petitioner No. 3 to be within the age as on 25.04.2016 and shall grant approval to his services. However, the petitioner No. 3 would be entitled for salary only from 1st November, 2019.

8. The service shall be counted from 25.04.2016 for other purposes.

9. The writ petition is accordingly disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

mta