

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12345 OF 2016

Jagannath s/o Nandu Rathod

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr. N.P.Patil Jamalpurkar, advocate for the petitioner.
Mr.S.G.Sangale, AGP for Respondents No.1 to 3.

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

DATE : 23rd September, 2019

PER COURT:

1 Heard Mr.Patil, learned Counsel for the petitioner at length.

2 A very limited point falls for our consideration on the backdrop of the prayer in the petition i.e. prayer clause "C", whereby the petitioner seeks a direction to the respondents to issue appointment order in favour of the petitioner for the post of Lecturer, Grade-B.

3 The facts, which are not in dispute, are, the petitioner is possessing academic qualification, namely M.A., M.Ed. The

petitioner is a member of 'Banjara', a Vimukta Jati category. In the year 2004, the petitioner was serving in Zilla Parishad Primary School, Pandurni, Tq. Mukhed, District Nanded, as an Assistant teacher. An advertisement came to be issued by the Maharashtra Public Service Commission calling applications from the eligible candidates for the post of Lecturer, Grade-B. The petitioner, in response to the advertisement, filed his application for the said post. As the petitioner was serving with the Zilla Parishad, he sought necessary permission from the Zilla Parishad to appear for the examination to be conducted by the MPSC. The petitioner was a successful candidate in the examination conducted by the MPSC on 08.08.2004. The petitioner was duly selected for the post of Lecturer, Grade-B. Resultantly, his name was recommended for appointment as Lecturer, Grade-B. Respondent No.2 informed the petitioner, by communication dated 03.12.2005, that as the petitioner is selected as Lecturer, Grade-B after 01.11.2005, his earlier service will not be counted for "Defined Contribution Pension Scheme". In the said communication, there was reference to Government Resolution dated 31.10.2005. The petitioner was of the opinion that this was not a beneficial situation to him. As such, the petitioner, on his own will and wish and by a reason and logic, thought it fit not to join the post of Lecturer, Grade-B in spite

of an appointment order issued in his favour.

4 Subsequently, the State Government framed a policy and granted certain benefits by way of Government Circulars and Resolutions. The petitioner now feels that the policy now framed by the State Government is beneficial to the petitioner. As such, even though he was appointed to the post of Lecturer, Grade-B and he has not joined the said post, now he prays that Respondents be directed to appoint him on the post of Lecturer, Grade-B.

5 It may not be out of place to refer to an earlier proceeding i.e. Writ Petition No.7787 of 2009 filed by the petitioner before this Court. At that time also, the petitioner, on his own will and wish, instructed his Counsel not to press the petition and to seek leave to withdraw the petition with liberty to pursue the representation pending with the concerned authority. Accordingly, the Division Bench, by an order dated 01.03.2011, disposed of the petition with liberty as prayed for.

6 Mr.Patil, learned Counsel for the petitioner, submits that the representation was made to the State Government and it is still pending.

7 Be that as it may. As it was the choice exercised by the petitioner without there being any external pressure on him and the said choice was exercised by a reason and logic not to join the post of Lecturer, Grade-B, after lapse of about twelve years, the claim for appointment on the said post cannot be revived and the Respondent-authorities cannot be fastened with the burden and liability to accept the request for appointment of the petitioner, who himself thought it fit not to join the said post.

8 Considering all these facts, we see no merit in the petition. Writ Petition is, thus, dismissed accordingly.

AVINASH G. GHAROTE
JUDGE

PRASANNA B. VARALE
JUDGE

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