

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10579 OF 2015

Shri. Rajendra Ram Pawar and another	..Petitioners
Versus	
The State of Maharashtra and another	..Respondents

**WITH
WRIT PETITION NO.10582 OF 2015**

Shri. Ashish Hanmantrao Rathod and another	..Petitioners
Versus	
The State of Maharashtra and another	..Respondents

Mr. Vinayak Kumbhar I/by Mr. N. V. Bandiwadekar, Advocate for the Petitioners.

Ms. Nisha Mehra, AGP for the Respondent - State.

**CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.**

DATE : 10th JULY, 2019

P.C.

1] The two captioned Petitions are being disposed of by a common order because same issue arises for consideration, though the factual backdrop is different.

2] Petitioners of Writ Petition No.10579 of 2015 are Shri. Rajendra Ram Pawar and Mahatma Gandhi Lokseva Sangh.

Shri. Rajendra Ram Pawar was appointed as a Peon by the Mahatma Gandhi Lokseva Sangh on 1st October 2007. The appointment was after following the procedure prescribed i.e. inviting applications from all eligible candidates. Required by law, the appointment was forwarded to the Education Officer for grant of necessary approval and the reason thereof obviously is that the State is entitled to ascertain whether the appointment was after following the procedures of the law.

3] Refusing to grant approval, impugned communication dated 29th September 2015 records the reason that on 02.05.2012 a ban was imposed on making fresh appointments. Though not stated in the order of rejection, the ban on making appointments in educational institutions receiving grant-in-aid from the Government is that surplus employees in similar grant-in-aid recipient institutions required to be absorbed.

4] Pertaining to Writ Petition No.10582 of 2015, the relevant fact is that the 1st Petitioner was appointed by the 2nd Petitioner as a Junior Clerk on 21st January 2014 after following the procedure to be followed i.e. inviting applications from all eligible candidates. His appointment was forwarded to the Education Officer for confirmation and has been rejected by the impugned order dated 29th September 2015 for the reasons we have recorded pertaining to Writ Petition No.10579 of 2015.

5] Concerning Writ Petition No.10579 of 2015, it strikes reader that the 1st Petitioner therein was appointed as a Peon in the year 2007 and thus ex-facie the order banning fresh recruitments issued on 02.05.2012 could not relate to Petitioner No.1 of said Petition. However, learned counsel for the Respondents states that there was a similar ban issued on 25.11.2005.

6] Be that as it may, the common question of law which arises for consideration is that upon ban on fresh appointments being made on the reasoning that the surplus staff in other institutions needs to be adjusted, whether institutions which require extra hands have to be left without extra hands for an indefinite period.

7] The obvious answer has to be 'NO'.

8] Institutions are managed by personnel and if the personnel strength is approved of the same is obviously after a study conducted on the staffing pattern. This is conducted by the Education Department.

9] Petitioner No.2 in both Writ Petitions needed hand of a Peon and a Junior Clerk respectively. If the State had imposed a ban on further recruitment on the ground that surplus staff in other schools needed adjustment, the surplus staff had to be deputed to the said two institutions. Till date this has not happened. Meaning thereby, those surplus staff identified in other institutions have not

been allocated to the Petitioner No.2 of the two captioned Writ Petitions.

10] That apart, what is current position also needs to be ascertained.

11] Thus, we dispose of both the Writ Petitions quashing the impugned order dated 29th September 2015. We issue a direction to the 2nd Respondent in the two Writ Petitions to reapply his mind to the communication sent to him seeking approval to the confirmation of Petitioner No.1 in the two Writ Petitions. While taking decision, 2nd Respondent would be guided by the present judgment. Necessary decision be communicated to the parties within six months from the date of this order.

N. M. JAMDAR, J

CHIEF JUSTICE