

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1623/2018

(RAMANNA MALLANNA TUNKIWAR VERSUS THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Ansari, counsel for petitioner.
Shri A.M. Balpande, A.G.P. for R-1 & 3.
Shri V.B. Bhise, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 17, 2019.

C.A.W. NO. 1212/2018.

Application for amendment is allowed. Amendment be carried out forthwith.

The civil application is allowed and disposed of.

WRIT PETITION NO.1623/2018.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard.

The petitioner is aggrieved by the order passed by the Divisional Commissioner, Amravati thereby dismissing the appeal preferred by the petitioner under Rule 13 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964 (for short, 'the said Rules').

It is the case of the petitioner that on 01.12.1989 he was appointed as a Peon with the Gram Panchayat. Pursuant to the Government Resolution dated 23.08.2005, 10% posts of Junior

Clerks were to be filled in from in-service employees of the Zilla Parishad based on seniority. Since according to the petitioner, he had passed Uttama Hindi Examination that was conducted by the Mumbai Hindi University on 01.06.2010 and as that examination was held to be equivalent to the Secondary School Certificate Examination, the petitioner was considered for the post and was accordingly appointed on the post of Junior Clerk. It was thereafter found by the Zilla Parishad that the qualifications acquired by the petitioner were not sufficient to qualify to hold the post of Junior Clerk. Hence, by the order dated 29.10.2016, the services of the petitioner came to be terminated. Being aggrieved, the petitioner filed an appeal under Rule 13 of the said Rules. By the impugned order, while dismissing the appeal it was directed that the petitioner be reverted to the post of Peon. That order is challenged in the present Writ Petition.

Shri S.S. Ansari, learned counsel for the petitioner submitted that the qualification acquired by the petitioner from Mumbai Hindi University was equivalent to the Secondary School Certificate Examination and therefore there was no reason to revert the services of the petitioner. According to him, said qualification was considered to be equivalent for being appointed as Secondary School Teacher. As the petitioner was holding the post of Junior Clerk it ought to be held that the qualification acquired was equivalent to Secondary School Certificate Examination. Moreover, the requirements of the duty of a Junior Clerk could not be compared with the requirements of the qualification of a teacher and hence it be held that the petitioner had acquired the equivalent qualification.

Shri V.B. Bhise, learned counsel for the respondent no.2 and Shri A.M. Balpande, learned Assistant Government Pleader for the respondent nos.1 and 3 supported the impugned order. Reliance was placed on the Government Resolution dated 14.06.1999 in which the State Government had recognized said qualification to be equivalent only for Hindi Teachers in a Secondary School. Since the equivalence was restricted by the Government Resolution dated 14.06.1999, it was not open for the petitioner to contend otherwise. The learned counsel therefore submitted that the impugned order did not call for any interference.

Heard the learned counsel and perused the documents on record. The Divisional Commissioner has taken into consideration the Government Resolution dated 14.06.1999 and has found that the post of Junior Clerk was beyond the scope of the aforesaid Government Resolution as equivalence was provided only for the post of Secondary Hindi Teacher. This Government Resolution has not been challenged by the petitioner. It has been further found that since the petitioner had entered service as a Peon he ought to have been reverted to that post instead of terminating his services. This approach is legally correct and the direction to that effect has been rightly issued. Thereafter by passing an order on 09.02.2018 the services of the petitioner have been restored on the post of Peon. It is thus found that the impugned order has been passed in the light of the Government Resolution dated 14.06.1999. Hence, there is no reason to interfere with the impugned judgment.

The Writ Petition is dismissed. No costs.

Needless to state that if any challenge by the petitioner to the Government Resolution dated 14.06.1999 succeeds, it will be permissible for the petitioner to take further steps in accordance with law.

JUDGE

APTE