

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2321 OF 2019

Ramesh Anandrao Gavhane,
 Age 50 years, Occu. Service,
 R/o. Anjanapur, Tq. Kopargaon,
 Dist. Ahmednagar

.. Petitioner

Versus

1. The State of Maharashtra,
 Through its Secretary,
 School Education Department,
 Government of Maharashtra,
 Mantralaya, Mumbai-32
 2. The Education Officer (Secondary),
 Zilla Parishad, Ahmednagar
 3. Avarshan Pravan Kshetra Shikshan
 Prasarak Mandal, Jawalke-Dhondewadi,
 Tq. Kopargaon, Dist. Ahmednagar,
 Through: its Secretary,
 Shri. Uttamrao Sagan Pachore
 4. The Head Master,
 Shetkari Madhyamik Vidyalaya,
 Jawalke-Dhondewadi,
 Tq. Kopargaon, Dist. Ahmednagar
- .. Respondents

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Mr. C. K. Shinde, Advocate for Petitioner

Mr. S. N. Kendre, A.G.P. for Respondents No. 1 and 2

Mr. N. N. Bhagwat, Advocate for Respondent No. 3 and 4

...

**CORAM : SUNIL P. DESHMUKH AND
 R. G. AVACHAT, JJ.**

DATE : 4th DECEMBER, 2020

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.) :-

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. There is no dispute on factual aspect that petitioner has been appointed by respondent no. 3 as Laboratory Attendant in Group-D post, which has been duly approved by respondent no. 2 - Education Officer (Secondary) in the year 1990. It is also not in dispute that petitioner possesses required qualifications for the post of junior clerk. While on 31-05-2017, erstwhile incumbent retired from the single post of junior clerk available in the schedule, management had resolved to promote petitioner on 06-10-2017 on said vacant post.

3. While management submitted proposal seeking approval to said promotion, education officer purportedly had rejected proposal for reason that pursuant to government resolution dated 28-10-2004, the post is to be filled in by direct recruitment and the assistant commissioner (B.C. Cell) has also considered that post of junior clerk is to be filled in by direct recruitment and there is ban on recruitment of non-teaching staff under government resolutions dated 12-02-2015 and 18-05-2015 and there were disputes in the management.

4. Mr. C. K. Shinde, learned counsel appearing for petitioner submits that government resolution dated 28-10-2004 has no application in present facts and circumstances which is in respect of creation of reservation over non-teaching staff in private schools. It is not the case of respondents that post of junior clerk

had ever been reserved. He goes on to submit that, for that matter, it is a single post in the school and such does call for any reservation. He purports to point out that there is nothing placed on record by the education officer about B.C.Cell having directed not to promote petitioner on vacant post nor government resolutions dated 12-02-2015 and 18-05-2015 have been placed on record. He further submits that the ban no longer subsists and stands lifted. He submits that there is no dispute in the management and said reason put-forth has not been substantiated by any material.

5. Learned counsel goes on to submit that why rejecting the proposal for approval on to promotion of petitioner as referred to above, the very same officer has, in fact, approved promotion of laboratory attendant to the post of junior clerk.

6. For aforesaid, he refers to and relies on communication at page no.33 (Exhibit 'G') dated 23-06-2015. He submits that reasons given for refusing to grant approval are absolutely untenable and are capricious and arbitrary.

7. Learned AGP purports to contend that under government resolution dated 28-10-2004, reservation has been made applicable to lower grade posts of group 'C' and 'D', and as such, are liable to be filled in by direct recruitment.

8. In present case, it would be pertinent to refer to Schedule 'F' of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, item '3', reading, thus,

“ 3. Guidelines for fixation of seniority of non-teaching staff:

Clerks: The clerical and supervisory posts in the channel of promotion comprise Junior Clerk, Senior Clerk, Head Clerk and Superintendent, Seniority of Junior Clerks in a School or Schools shall be determined on the basis of the date of appointment of the persons concerned. The post of Senior Clerk shall be filled in by promotion of seniormost Junior Clerk. The posts of Head Clerk and Superintendent shall be filled in respectively by promotion of senior-most Senior Clerk and seniormost Head Clerk, respectively.

Librarian: In the case where the Management runs only one School a seniority list of Librarian need not be maintained as the post is an isolated one. In case where the Management runs more than one School a seniority list of Librarian shall be maintained on the basis of the date of appointment. The Librarian shall not be held eligible for promotion to any other post.

Laboratory Assistants: A seniority list of Laboratory Assistants shall be maintained on the basis of the date of appointment. The incumbents of the posts shall not be held eligible for promotion to any other post.

Lower Grade Staff: A common seniority list of ***Laboratory Attendant, Naik, Oilman, Machine Attendant, Peon, Watchman, Chowkidar, Sweeper, call-woman, Kamathi, Attendant, Laboratory Hamal, Liftmen and such other lower grade staff, if any, shall be maintained on the basis of the dates of their appointment. If any of the lower grade staff improves his qualifications as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post according to his place in seniority.***”

9. Schedule speaks of giving preference to an incumbent employee improving his qualifications, to be considered for promotion to the post of junior clerk. In the circumstances, perusal of said government resolution does not refer to at all about the posts are to be filled in by direct recruitment. Communication refusing to grant approval to proposal sent by management in

respect of petitioner's promotion to junior clerk post, has been rendered untenable. Further, other reasons given in impugned order as well as given in support under affidavit, are not substantiated by producing any material on record.

10. Apart from aforesaid, it is intriguing that the very same officer has approved promotion to the post of junior clerk from the post of laboratory attendant in one case.

11. For all aforesaid reasons coupled with decisions relied on behalf of petitioner, namely in the cases of - *Ashok s/o. Shankarrao Shinde Versus Probodhan Shikshan Sanstha and others*, reported in *1999(1) Bom. C.R. 800*, and *Ramesh Shivram Khairnar Versus State of Maharashtra and others*, reported in *2003(4) Bom. C.R. 470*, it would be expedient that the impugned order is set-aside.

12. As such, the writ petition is allowed in terms of prayer clauses 'B' and respondent no. 2 shall pass appropriate orders on proposal submitted for petitioner's promotion as junior clerk. Rule is made absolute accordingly.

Sd./-

(R. G. AVACHAT)
JUDGE

Sd./-

(SUNIL P. DESHMUKH)
JUDGE