

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3114 OF 2019

Bhalchandra S/o. Kamlakar Kulkarni,
Age. 43 years, Occ. Service,
R/o. Nandgaon, Post. Sugaon,
Tq. Ambajogai, Dist. Beed.

...Petitioner.

Versus

1. The State of Maharashtra.
2. The Divisional Commissioner,
Aurangabad, Dist. Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Beed, Dist. Beed.

...Respondents.

Advocate for Petitioner : Mr. Dr. S.D. Tawshikar.
AGP for Respondent Nos. 1 & 2 : Mr. S.N. Morampalle.
Advocate for Respondent No. 3 : Mr. U.S. More.

CORAM : MANGESH S. PATIL, J.

**Judgment reserved on 02.12.2020.
Judgment pronounced on 16.12.2020.**

Judgment :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned AGP and the learned Advocate for the respondent No. 3 waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

3. By way of this petition under Article 227 of the Constitution of India, the petitioner is impugning the judgment and order passed by the learned Additional Divisional Commissioner, Aurangabad, dated 30.11.2018, dismissing his appeal preferred under Rule 14 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 (hereinafter 'the Rules'). The facts giving rise to the petition are to the effect that the petitioner was appointed as a peon in group 'D' category on compassionate ground in the employment of Zilla Parishad by the order dated 06.12.2004. At that time he was holding Bachelor of Arts degree. He subsequently acquired higher qualification of B.Ed. in the year 2008 and M.Ed. in the year 2010. He then requested his superiors to accommodate him in group 'C' cadre. He filed Writ Petition No. 4810/2013 in this Court with a similar prayer. By the order dated 29.08.2013, this Court directed the respondent No. 3 - Chief Executive Officer of the Zilla Parishad, Beed, to take decision on his representation. Pursuant to such a direction, the respondent No. 3 appointed the petitioner as a Cluster Head in group 'C' cadre by the order dated 25.10.2013.

4. By a communication dated 21.09.2015, the then respondent No. 3 called upon the petitioner to show cause as to why he may not be reverted to group 'D' cadre. It was informed to him that as per the

Government Resolution dated 23.08.1996, it is only if at the time of appointment on a compassionate ground in spite of having requisite educational qualification for appointment to the post in group 'C' a person is appointed in group 'D' cadre, such person alone was to be given appointment in group 'C' category in due course according to occurrence of a vacancy. It was further pointed out that he was not holding the requisite qualification of B.Ed. which was necessary for appointment to group 'C' cadre, when he was initially appointed in group 'D' cadre. He was called upon to show cause as to why his appointment in group 'C' category be not recalled.

5. The petitioner replied the notice by his letter dated 28.09.2015. After giving him opportunity of being heard, by the order dated 24.11.2015, his appointment in group 'C' cadre was cancelled holding it to be contrary to the Government Resolution dated 23.08.1996.

6. Being aggrieved, the petitioner preferred Writ Petition No. 11917/2015, challenging his reversion. By the order dated 23.07.2018, he was allowed to withdraw the Writ Petition with a liberty to prefer an Appeal under Rule 14 of the Rules. It is pursuant to such a liberty, he preferred the appeal which has been dismissed by the impugned judgment and order.

7. Learned Advocate Mr. Tawshikar would submit that the impugned order is unjust, arbitrary and illegal. He would submit that having once appointed in group 'C' cadre against a permanent vacancy, there was no reason for reverting the petitioner. There was no mistake or error on his part. He was given the appointment in group 'C' cadre based on his educational qualification which he had acquired prior to such appointment in group 'C' cadre. Having ones given such an appointment the same authority i.e. respondent No. 3 could not have cancelled the appointment and reverted the petitioner to the original cadre.

8. Learned Advocate Mr. Tawshikar would then submit that by a subsequent order, the petitioner was appointed to the post of Multi Purpose Health Worker (MPHW) which is also a group 'C' cadre. However, there is a disparity in the salary of that post and Cluster Head or such other posts of group 'C' cadre. He would then submit that couple of similarly situated persons who were also holding B.A. qualification were also accommodated on the post of Educational Officer (Panchayat) and Extension Officer (Accounts). No such favour is shown to the petitioner. Therefore, even on the ground of parity, the petitioner's claim to the post group 'C' cadre should have been considered. He would thus submit that the respondent No. 2

has not at all considered all these aspects and has dismissed the appeal. The impugned judgment and order is illegal and may be quashed and set aside and the petitioner's appeal be allowed.

9. The learned AGP and the learned Advocate for the respondent No. 3 would submit that there is no dispute as far as the appointment of the petitioner initially in group 'D' cadre and that he was holding a B.A. qualification at the time of such appointment. They would further submit that the requisite qualification for appointment to group 'C' cadre is B.Ed which qualification petitioner acquired subsequently in the year 2008. As per the Government Resolution dated 21.08.1996, it is only when a person being appointed to group 'D' cadre on compassionate ground holds a requisite educational qualification of group 'C' cadre on the date of his appointment in the group 'D' cadre that the Government Resolution mandates absorption of such employee in group 'C' cadre as and when a vacancy occurs. Without bearing in mind the Government Resolution dated 21.08.1996, the petitioner was appointed to group 'C' cadre. Realizing the mistake, after extending an opportunity of being heard to him, the respondent No. 3 has reverted him. No fault can be found if after realization of the mistake such an order of reversion was passed. There were no *mala fides* and none have been attributed.

The subsequent decision reverting the petitioner to group 'D' cadre, therefore, was strictly in accordance with the Government Resolution dated 23.08.1996 and, therefore, no fault can be found in the impugned order upholding it and dismissing the appeal.

10. As far as parity is concerned, the learned AGP and learned Advocate for the respondent No. 3 submit that the persons mentioned in the petition Shri Dinesh Ramhari Gulbhile and Shri Krushna Jivajirao Kulkarni both were holding requisite educational qualification on the date of appointment and were absorbed in group 'C' cadre no sooner the vacancy occurred as they were already holding the requisite educational qualification when they were appointed first in group 'D' cadre. They would thus submit that the petitioner is not entitled to claim any parity on these lines.

11. I have carefully considered the papers and the rival submissions. There is no dispute about the fact that the petitioner was appointed in group 'D' cadre on a compassionate ground and that at the time of his such initial appointment he was possessing B.A. qualification and was not illegible to be appointed in group 'C' cadre. There is also no dispute that he acquired B.Ed. in the year 2008 and M.Ed. in the year 2012. There is also no dispute that as per the

Government Resolution dated 23.08.1996, a person being appointed on compassionate ground having requisite educational qualification for being appointed to group 'C' cadre but was appointed in group 'D' cadre for want of vacancy in the former category are to be absorbed in group 'C' cadre as and when the vacancy would occur. If such is the state of affairs, there could be no manner of doubt that when the petitioner was not holding the educational qualification for being appointed to group 'C' cadre at the time of his initial appointment in group 'D' cadre, his case was not covered by the Government Resolution dated 23.08.1996.

12. True it is that appointment to a public office would depend upon the qualification possessed. The petitioner having been appointed on a compassionate ground which, as description suggests, is a concession and not a right, ones having been appointed, he is justified in having a legitimate expectation that his case to the higher post is considered in due course. However, admittedly the petitioner has acquired the requisite qualification for being appointed to group 'C' cadre in the year 2008. Therefore, as on the date on which he was, may be erroneously, appointed to that post, he was holding the requisite qualification. Admittedly, he even worked in the said post for almost two years. By working in that cadre he must have acquired

necessary experience of working as a Cluster Head. Besides, admittedly subsequently the petitioner has been given an appointment in group 'C' cadre as a Multi Purpose Health Worker on 24.04.2018. However, there is a vast difference in the pay scale of that post which is 5200-20200 G.P. 2400 and other group 'C' posts like Cluster Head and Extension Officer (Panchayat), the scale for which is 9300-34800 G.P. 4200. If such is the state of affairs, appointing the petitioner to the post of Multi Purpose Health Worker would not be proper.

13. In the normal course while exercising the writ jurisdiction under Article 227 of Constitution of India this Court would not have, but for the peculiar facts and circumstances discussed herein above needs to intervene in the interest of justice. Therefore, even if the petitioner is not entitled to lay any claim to group 'C' cadre pursuant to the Government Resolution dated 23.08.1996, and to that extent no error can be found in the impugned order confirming his reversion, in the interest of justice the impugned order is liable to be quashed and set aside.

14. The Writ Petition is, therefore, allowed. The impugned order passed by the respondent No. 2 is quashed and set aside. The

respondent No. 3 shall accommodate the petitioner on the post of Cluster Head or equivalent post. The petitioner however, shall not be entitled to any consequential benefits from any date prior to his such appointment to be made.

(MANGESH S. PATIL, J.)

S.P.C.