

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.496 OF 2020

Jayant S/o Vishwanathrao Naik,
Age-55 years, Occu-Service,
R/o. N-11, E-32/3, Mayur Nagar,
HUDCO, Aurangabad,
Tq. and Dist.Aurangabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32,

2. The Zilla Parishad, Aurangabad,
Tq. and Dist. Aurangabad

3. The Executive Engineer,
Public Works Department,
Zilla Parishad, Aurangabad,
Tq. and Dist. Aurangabad

-- RESPONDENTS

Mr.D.A.Karnik Advocate for the petitioner.
Mr.S.G.Sangle, AGP for State.
Mr.A.A.Jagatkar, Advocate for respondent Nos. 2 and 3.

**(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)**

DATE : AUGUST 6, 2021

ORAL JUDGMENT : (Per Ravindra V.Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties. The petitioner has put forth prayer clause 'B' and

‘C’ as under :-

"B. By issuing writ of certiorari or orders or any other Writ in the nature of Writ of Certiorari, the order dated 28.11.2019 passed by the Chief Executive Officer, Zilla Parishad, Aurangabad may kindly be quashed and set aside;

C. By issuing Writ of Mandamus or orders or any other writ in the nature of Writ of Mandamus, the respondents may kindly be directed to give posting to the petitioner as Assistant to Civil Engineer."

2. We have considered the extensive submissions of the learned Advocate for the petitioner and respondent Nos. 2 and 3 and the learned AGP on behalf of respondent No.1. With their assistance, we have gone through the petition paper book.

3. It is undisputed that there were 2 selectees who had been recommended for appointment as an "Assistant to Civil Engineer" with respondent No.2. Mr.Pandit Sandu Jadhav was one such selectee alongwith the petitioner. Prior to approaching this Court in this petition, the petitioner had filed WP No.1478/2017 before this Court contending that the first selectee Mr.P.S.Jadhav was already granted the posting and the petitioner was left out. Mr.Jadhav had approached the Industrial Court and on failing in the said litigation, he had approached the learned Single Judge Bench of this Court in WP No.7985/2011. Under the orders of the learned Single Judge, Mr.Jadhav was continued in his posting as an

"Assistant to Civil Engineer" and he continues to perform the said duties as his petition is pending final hearing. This Court, by order dated 05/08/2019, permitted the petitioner to approach the employer once again keeping in view the notification dated 30/08/2014 and the competent authority was directed to decide the claim of the petitioner within 4 months. Having suffered an adverse order dated 28/11/2019, which is impugned in this petition, the petitioner prays for parity.

4. The learned Advocate representing respondent Nos. 2 and 3 has strenuously contended that the petitioner cannot be said to be in the service of the Zilla Parishad. He relies upon the affidavit in reply filed by the Deputy Commissioner (Establishment), Office of the Divisional Commissioner, Aurangabad Division in the earlier WP No. 1478/2017, to support his contention that as the petitioner was not absorbed in the Civil Engineer Assistant Cadre, he cannot be appointed as an Assistant to the Civil Engineer.

5. There is no dispute that the petitioner was appointed as a "Pump Operator" from the funds of the Zilla Parishad. He was granted the benefits of the Kalelkar Settlement which is evident from the order dated 07/12/1998, by virtue of which he was brought on Converted Regular Temporary Establishment (CRTE). The benefits under the Kalelkar Settlement are available to the employees, who are working as Daily

Wagers for an initial period of 5 years. After being brought on CRTE, they are then absorbed in the regular service of the Zilla Parishad after putting in 5 more years in service on CRTE, which is known as Regular Establishment. The order dated 05/08/2006 placed before us indicates that both the petitioner and Mr.Pandit Jadhav were Pump Operators who were brought in the Regular Employment of the Zilla Parishad as per the Kalelkar Settlement. This eliminates any possible argument that this petitioner was not in employment of the Zilla Parishad. It is equally undisputed that both these persons were the selectees to be appointed as "Assistants to the Civil Engineer".

6. In our view, it would be an ironical situation that Mr.P.S.Jadhav continues to work as an Assistant to the Civil Engineer and the petitioner is not granted the said posting on the plea that Mr.Jadhav's case is pending litigation. The petitioner has tendered an affidavit dated 06/08/2021, which is taken on record and marked as 'X' for identification. By virtue of the affidavit, he submits that he has given an undertaking that if Mr.P.S.Jadhav suffers an adverse order in WP No.7985/2011 and his posting as an "Assistant to Civil Engineer" is taken away, the petitioner would voluntarily vacate the said post and would be willing to revert back to his earlier posting without a murmur. He prays that he may be appointed as an "Assistant to Civil Engineer" subject to such undertaking.

7. We find that the petitioner's affidavit undertaking to vacate the said post in the event of the claim of Mr.Jadhav being negated by this Court, is a statement made to the Court.

8. In view of the above, this petition is partly allowed. The impugned order dated 28.11.2019 passed by respondent No.2 shall be kept in abeyance and the petitioner shall be appointed within 3 weeks as an "Assistant to Civil Engineer", akin to the appointment of Mr.P.S.Jadhav. Needless to state, if the claim of Mr.Jadhav is negated by this Court, the petitioner would vacate the said posting in the light of his undertaking, within 4 weeks thereafter.

9. Rule is made partly absolute in the above terms.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)