

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

**903 WRIT PETITION NO.3010 OF 2020 WITH
CA/2246/2020 IN WP/3010/2020**

**SAHEBRAO VITTHALRAO JONDHALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Petitioners : Mr. C.R. Thorat
Advocate for Applicant in CA/2246/2020 : Dr. Swapnil D. Tawshikar
AGP for Respondent/State : Mr. S.B. Pulkundwar
Advocate for Respondent No.2 / (for Respondent No.11 in
CA/2246/2020) : Mr. R.K. Ingole
...

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 26th AUGUST, 2021

PER COURT:-

1. The petitioners have put-forth prayer clause (A) and (B) as under:

“A. By issuing Writ of Certiorari or any other appropriate Writ or direction in the like nature, the impugned order dated 28.01.2020 issued by the Desk Officer, Urban Development Department, Government of Maharashtra may kindly be quashed and set aside.

B. Pending hearing and till final disposal of this Writ Petition, be pleased to stay the impugned order dated 28.01.2020 issued by the Desk Officer, Urban Development Department, Government of Maharashtra.”

2. By virtue of the interim order dated 20.02.2020, the petitioners services in the Class-III category have been protected.

3. We have extensively heard the learned counsel for the

respective sides including the learned advocate for the intervener. We have perused the judgment delivered by the learned Industrial Court, Jalna dated 08.02.2019 in Complaint (ULP) No.54 of 2017 filed by the intervener, who had tried to canvass that as these petitioners were illegally recruited in the Class-III category, though the Lad-Page recommendation (vashila paddhat) does not permit appointment to Class-III categories, save and except Class-IV categories. There is no dispute that these petitioners have been recruited in 2009 under the Lad-Page recommendations. However, the respondent - corporation inducted them in employment in Class-III category. The learned Industrial Court has analyzed the Lad-Page recommendations and has come to a conclusion that the said settlement provides for appointment of daily wagers only in the Class-IV category.

4. When the impugned order dated 28.01.2020 was passed due to the complaint filed by the intervener, who has not been added as a respondent in this petition, these petitioners were not heard. Hence the prayer at clause (A). It is canvassed that these petitioners have been working in the Class-III category from 2009 onwards.

5. We are of the view that if an illegality has been committed, passage of time would not cure the illegality. Nevertheless, the petitioners have a right of hearing if they are to be shifted to the Class-IV category on the ground that the Lad-Page recommendations does not permit the recruitment in the Class-III category.

6. There is no dispute that respondent no.2 – Nanded Waghala

Municipal Corporation, through its Commissioner, is an appointing authority. As such, the corporation need not approach the secretary of the municipal corporation for guidance or decision. The corporation has to consider the provisions of the Lad-Page recommendations and assess as to whether the appointment of these petitioners were correctly made in the Class-III category. If such appointment is unsustainable, the Commissioner has to issue appropriate orders after hearing the petitioners as well as the intervener.

7. In view of the above, this petition is partly allowed. The impugned order dated 28.01.2020 is quashed and set aside.

8. As such, we direct these petitioners as well as the intervention applicant, Shri Sumedh Bhagwanrao Bansode to appear before the Commissioner - respondent no.2 on 08.09.2021 at 03.00 pm in the office of the Commissioner. The Commissioner shall conduct a hearing on this issue and especially in the light of the complaints filed by the intervener, Shri Sumedh Bansode. We also permit all to enter their written notes of submissions. After granting a reasonable opportunity of hearing to the parties, the Commissioner shall pass a reasoned order as expeditiously as possible and preferably on or before the 30th day of October, 2021. All contentions of the litigating parties are kept open.

9. Since the intervener Shri Bansode is said to have held out threats of self immolation since his complaints against these petitioners were not being looked into, we direct the said applicant to enter an affidavit undertaking before the Commissioner – respondent no.2 herein

and a copy to be filed in the registry of this Court in the said writ petition clearly stating therein, that he will not hold out threats either of self destruction or causing harm to anybody else in relation to any matter connected with his employment or otherwise. Such affidavit shall be entered in this Court as well as before the Commissioner - respondent no.2, on or before 09.09.2021.

10. The civil application does not survive and stands disposed off.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)