

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.3987 OF 2020

VICKY BHAGWAN GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Dighe Vithal H.
AGP for Respondents-State : Mr. S. G. Sangle.
Advocate for Respondent No.3 : Mr. S. S. Wagh.

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CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.

DATE : 07.09.2021

PER COURT :-

1. On 01.09.2021, we had passed the following order :

"1. By this petition, the petitioner has put-forth prayer clause (B) and (C) as under:

"B. Issue writ of certiorari, or any other appropriate writ, order or directions for quashing the impugned order dated 25.02.2020 issued by respondent no.2 Education Officer (Secondary), Zilla Parishad, Ahmednagar, rejecting the proposal of the petitioner for grant of approval as a Peon and for that purpose issue necessary orders.

C. Issue writ of mandamus, or any other writ in the like nature, directing the respondent no.2 Education Officer (Secondary), Zilla Parishad, Ahmednagar to grant the approval to the appointment of the petitioner as a Peon as per the proposal submitted by the respondent/school from

the date of appointment and for that purpose issue necessary orders.”

2. We have considered the submissions of the learned advocate for the petitioner, advocate S.S. Wagh for respondent no.3 and the learned AGP on behalf of respondent nos.1 and 2. With their assistance, we have perused the petition paper book and the record available.

3. By the impugned order dated 25.02.2020, the Education Officer has refused to grant approval to the appointment of the petitioner on the post of a peon. The grounds put-forth for such refusal are as under:

(a) By Government Resolution dated 12.02.2015 and 18.05.2015, there was a ban on recruitment (there is another Government Resolution dated 02.05.2012 imposing a ban on recruitment).

(b) The staffing pattern for the non-teaching employees was not formalized.

(c) No permission was obtained from the Education Officer for publishing the advertisement dated 03.11.2013 for filling in the post.

(d) The petitioner was appointed on 05.12.2013 and the proposal for approval of his appointment was forwarded on 19.11.2019.

4. The learned advocate for the petitioner has strenuously contended that as the petitioner is now working for almost 7 years, he could not be left in the lurch. He applied pursuant to the advertisement. A selection committee interviewed him on 10.11.2013 and he was legally appointed on 05.12.2013.

5. We find from the advertisement that one post of a peon from the open category was advertised. The qualifications were mentioned as 10th or 12th pass. The petitioner belongs to the scheduled caste category and has passed the 9th std, but not the 10th std. So also, the pendency of the staffing pattern for the non-teaching employees and the ban on recruitment on teachers and non-teaching category employees squarely applied to the petitioner.

6. The learned advocate for the petitioner canvassed that the

rules appeared to prescribe a lesser qualification for appointment of a peon. We are unable to accept this contention for the reason that once the management prescribed the minimum qualification as 10th or 12th pass, all those candidates desirous of seeking appointment who are not SSC or HSC, may not have applied and as such, a large chunk of the public at large may have kept themselves away from the said selection process.

7. In the light of the above, we were to conclude this order by dismissing the petition.

8. The learned advocate for the petitioner submits that a short adjournment may be granted for him to research as to whether in such circumstances, the approval can be granted.

9. In view of the above, we are listing this matter on 07.09.2021, for passing orders."

2. The learned advocate for the petitioner submits on instructions that as the petitioner has completed seven (7) years in employment and as two sanctioned posts of Peon are vacant, respondent No.3-Management may take recourse to a fresh recruitment process. The petitioner would apply pursuant to such recruitment drive and the Management may consider his candidature on merits.

3. The learned advocate for respondent No.3-Management submits that considering the staffing pattern, which presently indicates two vacancies for the post of Peon, the Management would initiate appropriate steps for recruitment only after

approaching the Education Officer in accordance with law for seeking permission and only if the Education Officer grants permission in the absence of any legal impediment, the Management would initiate the said recruitment process.

4. In view of the above, to the extent of the impugned order, this petition is dismissed.

5. We are not required to make any comment on the request of the petitioner and the response of the Management. Suffice it to say that the law on recruitment shall strictly be complied with, in the event, the Management desires to initiate any such process.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-