

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

941 WRIT PETITION NO.6367 OF 2018

ARJUN GUNDERAO GHUME
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Gunale V. D.
AGP for Respondents-State : Mr. S. R. Yadav.
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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 17.11.2021

PER COURT :-

1. Despite service of Court notice issued on 25.06.2018, the respondent Nos.3 and 4 - Management / Junior College have not responded to the court notice.

2. The petitioner has put forth prayer clauses "C", "D" and "E" as under :

"C. By issuing writ of Certiorari or any other appropriate writ, order or directions the impugned order/communication dated 23.08.2017 passed by the Deputy Director of Education, Latur Region, Latur thereby refusing approval to the appointment of the petitioner as Peon be quashed and set aside."

"D. By issuing writ of mandamus or any other appropriate writ, order or directions the respondent Nos.1 and 2 be directed to grant an approval to the appointment of the petitioner as

Peon in pursuance of the proposal submitted by the respondents no.3 and 4 on 10.03.2014 which is received by the respondent no.2 on 12.03.2014 and release the salary grant of the petitioner and pay him the regular monthly salary since from the date of his appointment including the arrears of his salary and for that purpose necessary directions be issued."

"E. Pending the admission, hearing and final disposal of this writ petition the respondents no.1 and 2 be directed to grant an approval to the appointment of the petitioner as Peon in pursuance of the proposal submitted by the respondents no.3 and 4 on 10.03.2014 which is received by the respondent no.2 on 12.03.2014 and release the salary grant of the petitioner and pay him the regular monthly salary since from the date of his appointment including the arrears of his salary and for that purpose necessary directions be issued."

3. The petitioner is aggrieved by the order dated 23.08.2017 passed by the Deputy Director, Education, Latur, Division, Latur refusing to accord approval to the appointment of the petitioner on the post of a Peon on account of serious legal deficiencies.

4. The learned advocate for the petitioner submits as under:

- (a) The petitioner has acquired S.S.C. qualification in March 2008 and belongs to the Nomadic Tribe.
- (b) After an employee namely L. P. Gunaiwad working as a Peon with respondent No.4 died on

24.11.2011, the post of a Peon became vacant.

- (c) The Management published an advertisement in Daily Newspaper "Mahasagar Samachar" on 03.03.2012 and invited applications from eligible candidates for the post of Peon, from the Nomadic Tribe category.
- (d) The Local Selection Committee conducted interviews on 10.03.2012 and selected the petitioner as a Peon on 10.03.2012.
- (e) In a meeting held on 12.03.2012, the Managing Committee decided to appoint the petitioner and issued the appointment order on the same day i.e. on 12.03.2012.
- (f) The appointment order issued to the petitioner on 12.03.2012, at page No.25 in the petition paper book, was served on the petitioner by hand-delivery.
- (g) The petitioner joined as a Peon on the same day i.e. on 12.03.2012 by submitting his joining report.
- (h) The impugned order is illegal and unsustainable as the reasons mentioned therein are insignificant and

do not deserve any consideration.

- (i) The petitioner is working for the last 9 years and therefore this Court should direct the Deputy Director, Education to grant approval to his appointment as a Peon.
- (j) There is no requirement of considering the reservation roster as there was only one post of Peon with the Management in the said school and therefore, the said post cannot be reserved for any category.

5. The learned AGP relies on the affidavit-in-reply filed by the Deputy Director of Education, Latur Division, Latur, dated 11.12.2018 and contends as under :

- (a) After the incumbent Peon, L.P. Gunaiwad passed away on 24.11.2011, the eligible member of the family had a claim to seek compassionate appointment by making an application within one year.
- (b) The Management waited for three months and purportedly passed a resolution as contended by

the petitioner, on 01.03.2012 concluding that nobody from the family of Mr. Gunaiwad had approached for compassionate appointment and therefore, the post has to be filled in from the public.

- (c) The Management did not seek any permission from the competent authority to fill in the post by issuing an advertisement.
- (d) The Management did not approach the competent authority seeking allotment of a suitable surplus Peon, if any.
- (e) The resolution dated 01.03.2012 deciding to publish an advertisement is unsustainable as no prior permission was taken and the draft advertisement was not approved.
- (f) The Government Resolutions dated 12.02.2015 and 06.02.2012 indicate that the Government has a policy of not permitting appointment in the non teaching staff category until the appropriate permission is taken.

- (g) The Government Resolution dated 06.02.2012, provides under Clause A(2) that the Management cannot recruit a person without the competent authority considering whether any reservation is applicable.
- (h) In the same Government Resolution, Clause (A) 3 mandates that the competent authority should be inquired with by the Management as to whether there is any surplus employee available to be absorbed and only in the absence of the same, permission to issue an advertisement should be placed before the authority for approval.
- (i) While seeking such permission, the details mentioned in Clause A(3) should be filled in by the Management.
- (j) After the competent authority grants permission to publish an advertisement, such advertisement should be published in at least two daily

newspapers having maximum circulations and such advertisement must contain the details submitted to the Management under Clause A(3).

- (k) If the advertisement is contradictory to the permission granted, such appointment would be the responsibility of the Management and not of the Government.
- (l) None of the above requirements have been fulfilled by the Management.
- (m) Merely because the petitioner has been recruited through the back door and that too in a surreptitious manner by compromising the right of the LRs of the deceased Peon Gunaiwad.
- (n) The interviews were purportedly held on 12.03.2012, the selection was made on 12.03.2012, the Management immediately convened a Managing Committee meeting to consider the selection on the same day, the resolution to appoint the petitioner is passed on

the same day, an appointment order is delivered by hand delivery to the petitioner on the same day and the petitioner submitted a joining report immediately on the same day. All these events have taken place on 12.03.2012.

- (o) The advertisement was published in a practically unknown newspaper by name "Dainik Mahasagar Samachar".

6. In the light of the submissions of the learned advocate for the petitioner and the learned AGP, which have been recorded point wise herein above, it is apparent that the case of the petitioner is a glaring case of gross illegalities committed by the Management. The entire selection appears to be stage managed. The Management has conspicuously remained away from these proceedings despite service of Court notice since they were aware that they would have to place before the Court the entire selection process, though illegally conducted and produce the details as regards the applicants who had tendered applications, produce the advertisement that was purportedly published and explain as to how the entire

exercise of beginning from interviewing the petitioner till his joining as a Peon, was conducted during working hours on a single day.

7. In view of the above, it is apparent that the Management has violated the procedure of recruitment and has illegally recruited the petitioner. Merely, because the petitioner has worked for nine years as a Peon would not be a ground to ignore the provisions of law and grant an approval by issuing a writ of mandamus under Article 226 of the Constitution, by turning a blind eye to the law applicable and the conduct of the Management.

8. In view of the above, we do not find that the impugned order refusing approval to the appointment of the petitioner could be termed as being perverse or erroneous, deserving to be quashed and set aside. We do not find a single reason to assign so as to hold that the impugned order is legally unsustainable.

9. As such, this petition fails and the same is therefore, dismissed.

10. The learned advocate for the petitioner submits that he has been working from 12.03.2012 till today without salary on the assurance of the Management that on some day approval will be granted and all arrears will be recovered from the State Government. We find that Clause 6 of the Government Resolution dated 06.02.2012 is likely to assist the petitioner in the event, he desires to seek damages or salary from the Management as it mentions that such illegal selections would be the responsibility of the Management.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-