

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2244 OF 2021

PETITIONERS :

- 1) Sangita Wd/o Gajanan Uplanchiwar, Aged about 51 yrs., Occ. Housewife, R/o Gondpipri, Tah. Gondpipri, Distt. Chandrapur.
- 2) Dhruv S/o Gajanan Uplanchwar, Aged about 22 yrs., Occ. Student, Both r/o Ward No.2, Indira Nagar, Gondpipri, Th. Gondpipri, Dist. Chandrapur.

...VERSUS...

RESPONDENTS :

- 1) State of Maharashtra, through its Secretary, Department of Village Development & Water Conservation Mantralaya, Mumbai-32.
- 2) State of Maharashtra, through its Secretary, Department of General Administration, Mantralaya, Mumbai-32.
- 3) Zilla Parishad, Chandrapur, through its C.E.O. Chandrapur, Tah. & Distt. Chandrapur.

Mr.A.K.Waghmare, counsel for the petitioners.
Mr.D. P. Thakre, Addl.G.P for the respondent Nos.1 and 2.
Mr. A.P.Thakre, counsel for respondent No.3.

**CORAM : SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 29.11.2021

ORAL JUDGMENT (Per : Sunil B. Shukre, J.)

Heard.

2. Coming to the merits of the matter, we find that this petition now would require final hearing. Hence, **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. As per the order passed on 11th August, 2021, respondent No.3-Chief Executive Officer, Zilla Parishad, Chandrapur was required to remain personally present before the Court. Her personal presence was to take effect on 30th November, 2021 but, by seeking circulation of this matter, learned counsel for respondent No.3-Chief Executive Officer, Zilla Parishad, Chandrapur got the hearing preponed to this day, the 29th day of November, 2021. If the preponement of the date of hearing was obtained, it only meant that the personal presence of Chief

Executive Officer, Zila Parishad, Chandrapur was also prepared and it would take effect on 29th November, 2021. However, Chief Executive Officer, Zilla Parishad, Chandrapur is absent. But, learned counsel for the respondent No.3-Zilla Parishad Chandrapur is present. There is thus non-compliance with the order passed on 16th November, 2021.

4. On 15th November, 2021, an important development was brought to the notice of this Court by Shri Waghmare, learned counsel for the petitioners. He informed the Court that during pendency of this petition, on 29th June, 2021, Aditya Gajanan Uplanchiwar was appointed with a direction to join on duty within 30 days of the order. This order dated 29th June, 2021 was issued by respondent No.3 knowing it fully well that Aditya Gajanan Uplanchiwar was severely suffering from the consequences arising from damage to both of his kidneys and thus was not able to accept the appointment and join on duty and that respondent No.3 also knew it fully well that application of petitioner No.2 for substituting name of Aditya Gajanan Uplanchiwar for the purpose of compassionate appointment was already made by him on

14th September, 2014 and that his name had also been referred to in the remark column of the waiting list published by Zilla Parishad, Chandrapur on 1st February, 2019. Respondent No.3 knew that in the waiting list dated 1st February, 2019, in the remark column, cognizance of the application of the petitioner No.2 dated 16th September, 2014 was already taken. Thus, respondent No.3 also knew that by this petition, the petitioner No.2, relying upon the view taken by this Court in the judgment dated 7th October, 2020 in Writ Petition No.2014 of 2019, had prayed for substitution of his name for the name of Aditya Uplanchiwar on the ground that the prohibition contained in the GR dated 20th May, 2015 did not apply to him. In spite of the respondent No.3 having possessed the knowledge as stated above, issued appointment order to a person, who was physically incapacitated to accept the appointment and join on duty. It was in this background that a contention was raised on behalf of the petitioners that the appointment order dated 29th June, 2021 was issued in order to frustrate the effort of the petitioners to secure appointment for petitioner No.2 on compassionate ground. This

Court, therefore, noting a summary of these facts in the order dated 15th September, 2021 directed the respondent No.3 to explain action of Zilla Parishad taken as per the letter dated 29th June, 2021. But, no explanation, however, has been filed by the respondent No.3 so far. Thus, there is also non-compliance with the direction issued by this Court on 15th September, 2021.

5. The discussion thus far made would show that respondent No.3 has not complied with the directions issued by this Court on two occasions, firstly on 15th September, 2021 and secondly, on 16th November, 2021. It is quite clear that this matter has not been conducted by respondent No.3 with reasonable care and dispatch which is expected of an officer occupying a supervisory position such as of Chief Executive Officer of Zilla Parishad, Chandrapur. We hope that in future, respondent No.3 would exercise due diligence and due care in attending to such matters and would not do anything which could be called as interference with the administration of justice. In fact, by issuance of the appointment order dated 30th June, 2021, *prima facie*, such interference has already occurred. But, this is the first occasion

that we have come across such an instance in the present case, and so we would not like to take any further action in the matter. But, as expressed by us already, the respondent No.3 would be careful in future.

6. Civil Application (w) No.1865 of 2021 dated 23rd November, 2021 has been filed on behalf of respondent No.3 and today it is fixed for hearing and necessary direction. The application seeks to explain the absence of learned counsel for respondent No.3 on the last date and it is attributed to sudden illness of the mother of learned counsel for respondent No.3. The explanation given in the application, considering the medical emergency stated therein, has to be accepted and we accept the same. But, we do not appreciate the manner in which this application has been signed and solemnly affirmed. This application has been signed not by respondent No.3, but by learned counsel for respondent No.3. The application, however, has been solemnly affirmed by the Chief Executive Officer, Zilla Parishad, Chandrapur. The solemn affirmation states, “that the contents of paras 1 to 5 above are drafted as per the official record

available with the office of Zilla Parishad and read over to me in vernacular; and information received by counsel which I believe to be true and correct to the best of my personal knowledge and belief". This solemn affirmation, in our view, is no affirmation in law. The affirmation has been done on two counts, firstly, on the basis of official record available with the office of Zilla Parishad, and secondly, on the basis of information received by counsel which is believed to be true and correct by the deponent making a solemn affirmation. When the medical emergency of the mother of learned counsel for respondent No.3 had occurred, it is obvious that it could not have been a part of the official record of the Zilla Parishad and that it could also not have been something which could be said to be an information received by the learned counsel. It was nothing but the knowledge personally possessed by the learned counsel and therefore, the solemn affirmation ought to have been made in a proper manner. In fact, the application itself should have been signed by respondent No.3 after making due enquiry as to what happened on the last date of hearing which was 16th November, 2021, but that did not happen.

So, here also we find that respondent No.3 has not exercised appropriate care which was expected of a supervisory officer like the Chief Executive Officer, Zilla Parishad, Chandrapur.

7. Although, we have brought on record the manner in which this matter has been conducted by and for respondent No.3, we do not propose to proceed further on this aspect of the matter as we have already said that in future respondent No.3 would have to be careful in such matters.

8. Coming to the merits of the matter, we find that the issue involved in this petition is squarely covered by the view taken by this Court in Writ Petition No.5944 of 2018, decided on 22nd July, 2019. The application of petitioner No.2 was much before the GR dated 20th May, 2015 and that the respondent No.3 had also taken a note of the application in the waiting list dated 1st February, 2019. Such being the facts of the case, now the name of the petitioner No.2 would have to be taken in the waiting list with effect from the date on which he attains majority, which would be 14th of September, 2017, which has arrived at after the GR dated 20th May, 2015 has come into force.

9. In view of above, we direct that the name of petitioner No.2 be taken on the waiting list and assigned appropriate seniority from the date on which petitioner No.2 has attained majority. We also direct that the appointment order dated 30th June, 2021, as per the condition No.1 stated therein, shall be treated as cancelled.

10. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J)

(SUNIL B. SHUKRE, J)