

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

WRIT PETITION NO. 5220 OF 2019

Shri Nandkumar Mahadeo Nannaware,
Aged about 34 years, Occupation Service,
R/o Doma, Tahsil Chinur, District
Chandrapur

.. Petitioner

Versus

1. State of Maharashtra, through its
Secretary, Secondary & Higher Secondary
Education & Sports Department,
Mantralaya, Mumbai – 440032

2. The Director of Education Secondary &
Higher Secondary Education, State of
Maharashtra, Pune

3. The Deputy Director of Education
Nagpur Division, Nagpur

4. Education Officer (Secondary), Zilla
Parishad, Chandrapur

5. Sanskruti Bahu-Uddeshiya Shikshan
Sanstha, Shankarpur, through its
President Dr.Shri S.M.Warjurkar, Aged
about 50 years, Occupation Medical
Practitioner, R/o Shankarpur, Tahsil &
District Chandrapur.

6. Sanskruti Madhyamik Vidyalaya, Doma,
Tahsil Chimur, District Chandrapur
through its Head-Master.

.. Respondents

Mr. A. Z. Jibhkate, Advocate for petitioner.

Mr. K. L. Dharmadhikari, A.G.P. for respondent Nos.1 to 4.

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

DATED : 30/11/2021

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

Heard. **Rule.** Rule made returnable forthwith.
Heard finally by consent of the learned counsel for the parties present before the Court.

(2) It is an admitted fact that the petitioner was appointed as Peon on 13/08/2012, and the Education Officer (Secondary) Zilla Parishad, Chandrapur granted approval to his appointment for the period from 13/08/2012 to 31/07/2014. This was done, as the petitioner was appointed on probation for two years. Now, it is the stand of the respondent Nos.3 and 4 that in the new staffing pattern for the year 2013-14 which came into force from August, 2014, and one post of Peon was reduced. Since this post was not available in the year 2014, the further approval to the appointment of the petitioner on his confirmation could not be granted.

(3) The stand so taken by the respondent Nos.1 to 4, is against the settled position of law. It is not in dispute that the petitioner was appointed by following due procedure and for the reason that one permanent post of Peon was available. If this was so, it would not make any difference whether an incumbent has been appointed on probation or as a confirmed employee. The appointment on probation has no nexus with the nature of vacancy and it has a direct connection with the performance of the incumbent. The person is not appointed on probation for the reason that the post on which he has been appointed is of temporary nature and is not permanent. He is appointed on probation only for the reason of testing of his performance in that post and to create a scope for termination of his employment in case his performance is not found to be satisfactory. Therefore, the change of staffing pattern from the year 2013-2014 would not have any effect on the existence of the permanent vacancy of the post of Peon and in any case it cannot operate retrospectively. In the present case, the permanent vacancy of Peon was available in the year 2012, as it appears from the record, in accordance with the staffing pattern, there being no positive assertion made in the reply of the respondent Nos.1 to 4 that even in the year 2012, this position

was not available as per the staffing pattern, in so far as the vacancy against which the petitioner was appointed on probation is concerned.

(4) In this view of the matter, we are inclined to allow the petition. The Writ Petition is allowed. The impugned order is hereby quashed and set aside. The respondent No.4 is directed to grant onward approval to the appointment of the petitioner in accordance with law, at the earliest and in any case, within four weeks from the date of the order.

Rule is made absolute in above terms. No costs.

[ANIL L. PANSARE J.]

[SUNIL B. SHUKRE J.]

KOLHE