

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

WRIT PETITION NO. 7668 OF 2019

(Mr. Rahematulla s/o Shafiullah Pathan vs. The President, Human Welfare and Educational Trust Salfi Nagar Warud, District - Amravati & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri G.R. Sardar, Advocate for the petitioner.
Shri P.S. Kshirsagar, Advocate for respondent Nos. 1 &
2.
Mrs. K.S. Joshi, Incharge Government Pleader for
respondent No. 3.

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**CORAM : DIPANKAR DATTA, C.J. &
PUSHPA V. GANEDIWALA, J.
FEBRUARY 01, 2021.**

P.C. :

Heard.

2. The petitioner is employed as a Peon in Vikas Urdu High School, Shendurjana Ghat, Tq. Warud, District – Amravati (hereinafter referred to as “the School”). A post of Junior Clerk having fallen vacant, the Head Master of the School issued an advertisement dated 01.11.2019 inviting applications from eligible candidates for recruitment on such post. The advertisement indicated that the aspirants must be Graduates and proficient in Marathi, English typing. Contending that in terms of Schedule ‘F’

appended to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the “1981 Rules”) he is entitled to be appointed as a Junior Clerk on promotion, the petitioner has approached this Court by presenting this writ petition. In particular, challenge has been laid to the advertisement dated 01.11.2019 and it is prayed that the same be set aside. A prayer is also made for a direction on the School to appoint the petitioner on the vacant post of Junior Clerk.

3. In course of hearing, Shri Kshirsagar, learned counsel for the respondent no. 1 – School submits that prior permission of the Education Officer, Amravati, has been sought for by a communication dated 14.01.2020 and that such permission is still awaited. Confronted with the legal position that the advertisement could not have preceded grant of permission and published in anticipation thereof, Shri Kshirsagar has also submitted that the advertisement dated 01.11.2019 shall be withdrawn and that a fresh advertisement published as and when the Education Officer permits the School to proceed in that behalf and if the petitioner is otherwise eligible, he may apply and offer his candidature.

4. In view of the aforesaid submission of Shri Kshirsagar, which we accept, part of the petitioner's grievance is taken care of. However, the other part relating to the direction on the School for his appointment on the post of Junior Clerk on promotion, still remains. We are of the considered opinion that the School having sought for permission of the Education Officer to recruit a Junior Clerk and such permission not having been granted till this date, the Education Officer may consider the entire matter including the aspect of the petitioner's claim for appointment on the post of Junior Clerk on promotion, in terms of the provisions of the Rules.

5. We, accordingly, dispose of this writ petition with a direction upon the Education Officer to consider the prayer of the School for a prior permission to recruit a Junior Clerk as well as the claim of the petitioner for appointment on the post of Junior Clerk on promotion, in accordance with law, as early as possible but not later than two months from date of receipt of this order. It would be desirable, if in course of such consideration, the Education Officer grants an opportunity of hearing to the Head Master of the School as well as to the petitioner in support their respective claims. The proceedings shall be ended by the Education Officer

by passing a reasoned order, which shall be communicated to the parties immediately thereafter.

6. Needless to observe, no opinion is expressed on the merits of the rival claims and all points are left open for consideration by the Education Officer, if raised before him.

(PUSHPA V. GANEDIWALA, J.)

(CHIEF JUSTICE)

*GS.

Gopichand
Shamdasani

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