

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

903 WRIT PETITION NO.1622 OF 2021

**MADHUKAR SHIVRAM BHANGARE
VERSUS
THE STATE OF MAHARASHTRA THR ITS SECRETARY
AND OTHERS**

WITH

904 WRIT PETITION NO.1671 OF 2021

**BHANUDAS BHAURAO WAWALE
VERSUS
THE STATE OF MAHARASHTRA THR ITS SECRETARY
AND OTHERS**

Mr. R. D. Bhalerao, Advocate for the petitioner
Mr. P. K. Lakhotiya, AGP for respondent Nos. 1 to 3
Mr. M. V. Dhongde, Advocate for respondent Nos. 4 and 5

**CORAM : RAVINDRA V. GHUGE &
S. G. DIGE, JJ.**

DATED : 19th April, 2022

PER COURT :-

1. By these two petitions, the identically placed petitioners pray for issuance of the writ of mandamus for directing the Education Officer to grant approval to the appointment of the petitioners as "Junior Clerks".

2. Since the petitioners are identically placed and the pleadings in the petitions are identical, we are

reproducing prayer clause 'B', 'C' and 'D' in the first petition, for reference, as under:-

"(B) Record and proceedings of the impugned refusal of service proposal by respondent Education Officer under challenge may kindly be called for in order to examine its legality, validity and propriety.

(C) By issuing an appropriate writ, order or direction in the like nature, the impugned refusal letter of respondent Education Officer (Secondary), Zilla Parishad, Ahmednagar dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior Clerk" (Annexed at Exh-A), being which is illegal, improper, unfair and unjust one, may kindly be quashed and set aside.

(D) By issuing an appropriate writ, order or directions in the like nature, the respondent no.3- Education Officer (Secondary), Zilla Parishad, Ahmednagar, may kindly be directed either to reconsider or to allow/approve the service proposal dtd. 18-1-2020 of the petitioner as a "Junior Clerk" duly submitted by respondent employer Management, in accordance to law as well as in its proper perspective as early as possible and within a stipulated period of time."

3. These petitions have been filed upon being aggrieved by the impugned order passed by the Education Officer (Secondary) refusing to grant approval to the promotion of the petitioners to the post of Junior Clerks. Both of them were working as "Naik". Prior thereto, both of them were working as "Peons".

4. On 30th November, 2019, both these petitioners were promoted as "Junior Clerks". On 18th January, 2020, the proposal is forwarded for approval and the Education Officer rejected the proposal on 20th April, 2020.

5. We have perused the impugned order which indicates serious deficiencies in the proposals tendered by the Management. Some pertain to tendering necessary documents. However, what is glaring is that the Management of the society has not passed any resolution, in as much as, the post of Junior clerk was not available to be filled in by promotion. This is the most serious illegality in the light of the law laid down by the learned **Full Bench of this Court** in the case of **Tanaji Madhukar Barbade Versus State of Maharashtra and others, 2010(6) Mh.L.J. 901**. So also, there was no evidence of these two petitioners, who initially joined as "Peons", having passed the requisite examination for acquiring the knowledge of operating computers.

6. The learned Advocate for the petitioners strenuously submits that the Management has promoted them on 30th November, 2020. No fault can be found with the Management in the light of the grounds set out in the memo of the petitions.

7. We find from the pleadings of the petitioners that

they have put forth the following grounds (reproduced verbatim):-

"I) That, the impugned refusal of respondent Education officer dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior clerk" is absolutely arbitrary and contrary to the principles of natural justice as well as to the principles of justice, equity and good conscience.

II) That, the impugned refusal of respondent Education officer dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior Clerk" is absolutely arbitrary and contrary to the truly existing facts and circumstances of the service case of petitioner's service, in accordance to law as well as in its proper perspective.

III) That, the impugned refusal of respondent Education Officer dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior Clerk" is absolutely arbitrary and contrary to the due process of law contemplated under the Provisions of Maharashtra Employees of Private Schools Regulation Act, 1977 and Rules, 1981.

IV) That, the impugned refusal of respondent Education officer dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior Clerk" is absolutely arbitrary and contrary to the truly existing facts and circumstances of the petitioner's service proposal, that as already the non-compliance unwarrantedly pointed out by the respondent Education officer in view of which he had refused to approve the service proposal of petitioner is illegal, improper, unfair and unjust one because already the respondent employer Management had submitted entire queried documents with the service proposal of petitioner seeking approval, in accordance to law as well as in its proper

perspective and even then the respondent Education officer absolutely without application of mind pleased to refuse to approve the service proposal of petitioner, which has resulted into great miscarriage of justice. Therefore, the petitioner unwarrantedly constrained and compelled by the respondent Education officer to approach before this Hon'ble High Court in the interest of justice so as to get him justice in real sense.

V) That, the impugned refusal of respondent Education officer dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior Clerk" is absolutely arbitrary and contrary to the Constitutional Guarantees provided by Constitution of India to its every Citizen like petitioner who is working as Secondary School non-teaching employee as a "Junior Clerk".

VI) That, even otherwise, the impugned refusal of respondent Education officer dtd. 20-4-2020, to approve the service proposal of petitioner dtd. 18-1-2020 as a "Junior Clerk" is bad-in-law and fit to be set aside."

8. It does not call for any debate that if the Management has committed an illegality, notwithstanding that these proposals were rejected in less than six months, the passage of time would not compel the Education Officer to legalize illegal promotional orders. The duration of service performed by these petitions on the promotional posts would not cure the illegality. After the Management forwarded the proposals for approval on 18th January, 2020, the Education Officer has considered the deficiencies and has rejected the proposals.

9. The Education Officer was not aware of the judgment of the learned Full Bench in **Tanaji Madhukar Barbade** (supra). Had this judgment been pointed out to him, he could have rejected the proposal on a solitary ground. The learned Full Bench has concluded that schedule "F" to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 read with the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 does not provide for a promotional avenue to the post of a Junior Clerk. It merely provides for a preference to be given to the lower grade staff in making the appointments to the post of Junior Clerk and laboratory assistant provided they compete with other candidates and are found illegible.

10. It would be apposite to refer to paragraph 20 of the judgment in **Tanaji Madhukar Barbade** (supra) here under:-

"20. In our opinion, therefore, the questions which have been referred to have to be answered thus,

1. The Government Resolution dated 15th April, 1991 cannot be made applicable to the teaching and non-teaching staff in recognised private schools which are governed by the provisions of the M.E.P.S. Act and Rules framed thereunder;

2. Schedule "F" to the M.E.P.S. Rules does not provide for promotion to the post of junior clerk. It merely provides a preference to be given to the lower grade staffs in making appointment to the posts of junior clerk and

laboratory assistant.”

11. It is, thus, obvious that the Management did not seek the prior permission of the Education Officer to fill in the post of Junior Clerk. Similarly, it has promoted the petitioners surreptitiously. In less than six months of such promotion, the Education Officer has issued the impugned orders refusing to grant approval. We do not find that the impugned order could be termed as perverse or erroneous.

12. These two petitions, being devoid of merits are, therefore, dismissed. No orders as to costs.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)

ssp