

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

WRIT PETITION NO. 5241 OF 2021

Padmin D/o Sonerao Hande
Age : 33 years, Occu. Service as Peon,
R/o. : Prakashnagar, Latur,
Tq. and Dist. : Latur.

...Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. Education Officer (Secondary)
Zilla Parishad, Latur.
3. Balvikas Shikshan Prasarak Mandal,
Latur, Tq. and Dist. Latur,
Through its Secretary.
4. Saraswati Vidyalaya, Khadgaon,
Prakashnagar, Latuy,
Tq. and Dist. Latur, through its
Head Master.

....Respondents.

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Mr. V.S. Panpatte, Advocate for petitioner.
Mr. Y. G. Gujarathi, AGP for respondent Nos. 1 and 2.
Mr. B.P. Gonare, Advocate for respondent Nos. 3 and 4.

...

**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**
DATED : 11/03/2022.

ORAL JUDGMENT :

1. Rule. Mr. Gujarathi, learned AGP waives service for

respondent nos. 1 and 2. Mr. B. P. Gonare, learned advocate waives service for respondent Nos. 3 and 4. Rule made returnable forthwith. By consent, heard finally.

2. By this writ petition filed under Article 226 of Constitution of India, the petitioner has impugned the order dated 1.12.2019 passed by respondent No. 2, thereby rejecting the approval to the appointment of the petitioner on the post of peon.

3. In response to the advertisement issued by the respondent Nos. 3 and 4 the petitioner applied for the post of peon and appeared for interview. The petitioner was appointed by respondent No. 4 on 10th October 2011 with effect from 19th October 2011. The Management submitted a proposal before respondent No. 2, seeking approval to the appointment of the petitioner as peon. Since respondent No. 2 did not take any decision on the proposal sent for granting approval to the appointment of the petitioner to the said post, the petitioner made representations to respondent No. 2 on 31.10.2013 and 27.12.2013. The petitioner also filed Writ Petition No.11006/2018 in this Court on 3rd October 2018 for appropriate reliefs. By order dated 1st December 2019, respondent No. 2 refused to

grant approval to the appointment of the petitioner as peon. The petitioner thereafter filed this writ petition for various reliefs.

4. Mr. Panpatte, learned counsel for petitioner invited our attention to the various exhibits to the petition including the impugned order dated 1st December 2019.

5. It is submitted by the learned counsel that the Government Resolution dated 12th February 2015 relied upon by respondent No. 2 is not applicable to the case of petitioner since the petitioner was appointed prior to the date of issuance of said Government Resolution and thus, staffing pattern of the year 2011-12 and 2012-2013 has to be considered. It is submitted that from 2014-2015 the posts of non teaching staff not having sanctioned cannot be a ground for refusal to grant approval to the appointment of the petitioner. The appointment of petitioner has been made against the post reserved for NT category and since the petitioner belongs to NT-C category, as per the special drive programme undertaken by the State Government for filling in the backlog of reserve category posts by issuing Government Resolution in the year 2011, the petitioner was appointed on the said post.

6. The learned counsel for the petitioner placed reliance on the judgment delivered by the Division of this Court at Principal Seat on 10th July 2017 in Writ Petition No. 8587/2016 directing that the Education Officers shall grant approval where the recruitment process is already commenced prior to Government Resolution dated 2nd May 2012 and where recruitment is made to fulfill the backlog of reserve category candidates.

7. Mr. Gujarathi, learned AGP for respondent Nos. 1 and 2 invited our attention to some of the averments made in affidavit in reply dated 10.3.2022 and would submit that there is no infirmity in the order passed by the Education Officer. The learned counsel for respondent Nos. 3 and 4 are supporting the case of the petitioner.

8. It is not in dispute that the petitioner was appointed on the post of peon by following requisite procedure from 10th October 2011 with effect from 19th October 2011 in the respondent No. 4 school which receives 100% grant in aid, on clear, vacant and sanctioned post reserved for NT-C category. The proposal of the Management, seeking approval to the appointment of the petitioner as

a peon was, however, rejected on the ground that the Government Resolution dated 12th February 2015 was applicable. The proposal is also rejected on the ground that from the year 2014-15 the posts of non teaching staff were not sanctioned.

9. In our view, both these grounds are totally contrary to the principle of law laid down by this Court in the catena of decisions. The Government Resolution did not apply with retrospective effect. In this case, the petitioner was admittedly appointed much prior to the date of Government Resolution dated 12th February 2015. The impugned order passed by the respondent No. 2, thus, deserves to be quashed and set aside. The learned AGP could not distinguish the judgment relied upon by the learned counsel Mr. Panpatte for the petitioner. In view of above, we pass the following order :-

ORDER

- (i) Writ Petition is allowed in terms of prayer clause 'B' and 'C'.
- (ii) Respondent No. 2 shall grant approval to the appointment of petitioner to the post of peon from the date of appointment within two weeks from today without fail and shall grant all consequential benefits

including insertion of the name of the petitioner in the Salarth Prnali within two weeks from the date of granting approval. The arrears of salary of the petitioner shall be released by respondent No. 2 within two weeks from the date of entering the name of the petitioner in *Salarth Pranali*.

(iii) Rule is made absolute in aforesaid terms.

Parties to act on authenticated copy of this order.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

ssc/