

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

WRIT PETITION NO. 9878 OF 2021

Kalim s/o Rafiq Shaikh,
Age; 49 years, Occ; Social Work,
R/o; Ahmednagar Cantonment,
Bhingar Camp, Ahmednagar,
District; Ahmednagar.

...PETITIONER

V E R S U S

1. The State of Maharashtra
Through its Secretary of Ministry,
of Education and Sports,
Mantralaya, Mumbai.
2. Union of India,
Through Ministry of Defence,
Dew Delhi.
3. Ahmednagar Cantonment Board,
AMX Chawk, Camp.
Ahmednagar-414002,
Through its Chief Executive Officer,
Ahmenagar Cantonment Board,
Ahmednagar.

...RESPONDENTS

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Advocate for the petitioner : Mr. Shaikh Mazhar A. Jahagirdar
AGP for the Respondent No.1 : Mr. K.N.Lokhande
Advocate for Respondent Nos.2 & 3 : Mr. A. G. Talhar, DSGI along with
Mrs. Chintamani Sudha S.
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 06.10.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule, made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

2. Claiming to be the ex-elected member of the Ahmednagar Cantonment Board, the petitioner has filed the present petition challenging the recruitment process initiated by the Cantonment Board for filling up various posts vide advertisement dated 28.12.2020. Petitioner neither participated in the recruitment process nor is he seeking appointment against any of the advertised posts. Therefore, when the petition came up before this Court on 06.09.2021, willingness of the petitioner to deposit amount of Rs. 1,00,000/- for entertaining the petitioner was sought. He has deposited an amount of Rs. 1,00,000/- on 04.10.2021 after which the notices in the petition came to be issued.

3. Today when the petition came up for hearing, when we made query to Mr. Jahagirdar, the learned Counsel appearing for the petitioner as to whether he would like to press the petition in the light of our prima-facie opinion about the lack of *locus standi* for the petitioner to file the petition, Mr Jahagirdar, answered the query in affirmative and continued to argue the petition. Accordingly, we proceed to decide the same.

4. The petitioner is an ex-elected member of Ahmednagar Cantonment Board and is aggrieved by initiation of recruitment process by the Cantonment Board for filling up the posts of Medical Officer, Junior Clerk, Nurse, Assistant Teacher, Lecturer and Linemen vide advertisement dated 28.12.2020. His principle grievance is that the recruitment process is in violation of the provisions of Article 16 of the Constitution of India, as the Cantonment Board has not followed the provisions of reservation while issuing the advertisement. He would contend that the requirement of reservation for disabled persons was also not followed. The next grievance of the petitioner is that the post of Assistant Teacher could not have been advertised by the Cantonment Board as the School in question is funded by the State Government, and that therefore the recruitment could be made only through Pavitra Portal as per Government Resolution dated 20.06.2018.

5. The respondent Cantonment Board has filed affidavit-in-reply, *inter-alia* questioning the *locus* of the petitioner in filing the petition. It is averred that despite claiming to be an ex-elected member of the Cantonment Board, the petitioner has described himself as “Member Cantonment Board-Bhingar, Ahmednagar” in letter dated 26.03.2021. It is also averred that the entire recruitment process has long since been completed and the eligible candidates have joined the services.

6. Appearing for the Petitioner, Mr. Jahagirdar the learned counsel would submit that even though the present recruitment process is completed, the Petitioner is required to be entertained in order to ensure that the Cantonment Board does not repeat the illegalities in future recruitment process. He has taken us through various correspondence made under the Right to Information Act to demonstrate that the figures of sanctioned strength, vacant posts available and vacancies in reserved category do not match with the vacancies advertised. Mr. Jahagirdar would contend that the post of Assistant Teacher is required to be filled only through the online portal of the State Government and that the Cantonment Board cannot unilaterally fill up those posts in schools funded by the State Government.

7. Mr. Talhar, the Deputy Solicitor General of India appearing for the Cantonment Board has opposed the petition and prayed for its dismissal.

8. Having heard the learned counsel for the parties, we find that the present petition is essentially in the nature of a public interest litigation. Petitioner is challenging the recruitment process initiated vide advertisement dated 28.12.2020. He has not applied in pursuance of the advertisement nor is he seeking appointment against any of the posts advertised. He thus appears to be espousing alleged public cause and therefore grievance is in the nature of a Public Interest Litigation. It

is trite that the public interest litigation in service matters is not maintainable. There is no dearth of decisions in support of this proposition. We may refer to only a few such decisions. Reference in this regard can be made to the decisions of the Apex Court in **1) Dr. Duryodhan Sahu And Ors vs Jitendra Kumar Mishra And Ors 1998 (7) SCC 273**, **2) Dr. B. Singh vs Union Of India & Ors 2004 (3) SCC 363** and **3) Neetu Vs. State Of Punjab And Ors. 2007 (10) SCC 614**. Therefore, even if the present Petition was to be styled as a public interest litigation, the same would not be maintainable. Petitioner has however filed a writ petition in respect of subject matter in which he admittedly does not have any private interest. Petitioner is not entitled to challenge the recruitment process. We therefore hold that the petitioner lacks *locus standi* to file the present petition challenging the recruitment process.

9. Even otherwise, the recruitment process is already finalised and the candidates have joined their respective posts. Those candidates, who would be adversely affected if relief was to be granted in favour of the petitioner, have not impleaded as party respondents, which is yet another reason why the petition cannot be entertained.

10. We are therefore on the view that the petition is a gross abuse of process of law. Despite giving an opportunity to the petitioner to withdraw the petition, he chose to press the same before us. He was warned on an earlier occasion also by granting him liberty to deposit

the amount of Rs. 1,00,000/- as a condition precedent for entertaining the petition. Petition was however argued at length before us. Petitioner is clearly frivolous and avoidable. In such circumstances, we deem it appropriate to impose costs on him. The amount deposited by him in this Court on 04.10.2021 is required to be forfeited and appropriated towards costs imposed in the present petition.

11. Accordingly, we dismiss the petition by imposing costs of Rs. 1,00,000/- on the petitioner, which shall be appropriated from the amount deposited by him in this court.

12. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE