

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

944 WRIT PETITION NO.8075 OF 2021

**NOOR MOHAMMAD MOHAMMAD ISMAIL
VERSUS
THE STATE OF MAHARASHTRA THR ITS PRINCIPAL SECRETARY AND
OTHERS**

...

Advocate for Petitioner : Mr. S.R. Sapkal
AGP for Respondent Nos. 1 & 2 : Mr. A.S. Shinde

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 20.09.2022.

PER COURT : (PER : SANDEEP V. MARNE, J.)

We have heard both the sides.

2. The proposal for petitioner's appointment on the post of peon has been turned down by the Education Officer (Secondary) Zilla Parishad Aurangabad by a communication dated 04.03.2017 on the ground of nonavailability of post for the academic years 2014-15, 2015-16 and 2016-17.

3. An affidavit in reply has been filed by the Deputy Education (Secondary) Zilla Parishad Aurangabad and in paragraph Nos. 4 to 7 it is pleaded as under :

“4. I say and submit that as per the documents placed on record by the petitioner and as are available with the office of answering deponent, the petitioner appears to have been appointed as peon vide order dated 02.09.2013 i.e. during the academic year 2013-14 when admittedly said post of peon was available and also included in the sanctioned staffing pattern.

5. I therefore say and submit that considering the entire record it does appear that the proposal of petitioner seeking approval to his service as peon could not have been rejected as the said post was not included in the sanctioned staffing pattern for the academic year 2014-15, 2015-16 and 2016-17, considering Government Resolution dated 12.02.2015, whereby the State Government had directed maintenance of status quo in respect of non-teaching posts including the post of peon on which the petitioner is appointed.

6. I say and submit that since the petitioner's appointment is during the academic year 2013-14 and the fact that the said post occupied by the petitioner is not reduced on account of reduction in number of students or for other reasons, but was not included in the sanctioned pattern for the subsequent years i.e. 2014-15, 2015-16 and 2016-17 only based on Government Resolution dated 12.02.2015, whereby status quo was ordered for recruitment of non-teaching posts.

7. I therefore say and submit that the petitioner's claim needs to be considered for approval from initial date of his appointment. Considering the fact that, the impugned order is issued by the office of the answering deponent the said mistake can now be rectified only by the higher authority i.e. the Deputy Director of Education."

4. Thus, it is an admitted position that a post of peon was indeed available during the academic year 2013-14 when the petitioner was appointed. The Deputy Education Officer (Secondary) has accepted the mistake but has expressed inability to correct the mistake on the pretext that it can be rectified only by the high authority i.e. Deputy Director of Education.

5. In the light of the position that emerges before us, we set aside the communication dated 04.03.2017 and direct the Education Officer (Secondary) Zilla Parishad Aurangabad to reconsider the proposal of the petitioner and take a fresh decision thereon within a period of four weeks from today.

6. The Writ Petition is accordingly allowed. No costs.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-