

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4725 OF 2021

VIJAY S/O NAGORAO VIBHUTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

AND

CIVIL APPLICATION NO. 11500 OF 2022 IN WP / 4725 / 2021
(Vijay Nagorao Vibhute Vs. The State and another)

...
Advocate for petitioner / applicant : Mr. D.R. Irale Patil
AGP for the respondent – State : Mr. K.N. Lokhande
Advocate for the respondent no. 2 : Mr. N.S. Kadam
...

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

DATE : 14 SEPTEMBER 2022

ORAL ORDER (MANGESH S. PATIL, J.) :

We have heard the respective advocates finally.

2. The petitioner is primarily aggrieved by the fact that pursuant to the decision of this Court in writ petition no. 7565 of 2008, though his appointment was affected and he was displaced, he was accommodated by treating his appointment as fresh appointment but his pay was not protected in spite of he having put in 10 years of service and in spite of the provision of rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981.

3. It appears that, one Maruti Chandoji Gaikwad had filed writ petition no. 7565 of 2008 in which the present petitioner was arrayed as respondent no. 24. While allowing the writ petition, this Court had passed the following order :-

“31. We therefore pass the following order:

ORDER

(I) The Zilla Parishad is directed to appoint the petitioner to the post of Livestock Supervisor with effect from the date of appointment given to the other candidates appointed in the open category with continuity of service. It is however made clear that the Zilla Parishad will not be liable to make any payment of backwages to the petitioner.

(II) The appointment of respondent No. 7 shall be considered as appointment made in the category of Other Backward Class(OBC) candidates from the date of his appointment in the open category.

(III) The Zilla Parishad is directed to appoint the respondent No. 24 to the post reserved for Nomadic Tribe as described in communication dated 1st September, 2017 by Zilla Parishad to the learned counsel for Zilla Parishad and also reflected in the communication dated 24th April, 2017 addressed by the Zilla Parishad to the petitioner under the provisions of Right to Information Act, produced on record by the learned counsel for respondent Nos. 4 to 12 and 19 to 28 within four weeks from today.

(IV) It is, however, made clear that the appointment of the respondent No. 24 to the said post shall be treated as fresh appointment and he will not be entitled to the deemed date of appointment which was the deemed date of his initial appointment.

(V) The Zilla Parishad shall act on the authenticated copy of this order. ”

4. Pursuant to clause (IV), the petitioner's appointment was specifically treated as fresh appointment and accordingly a fresh order

pursuant to this clause (IV) was issued on 31-08-2018 and he was brought down to the original pay scale of the post.

5. Aggrieved thereby he preferred an appeal under section 13 and 14 of the Maharashtra Zilla Parishad (Discipline and Appeal) Rules, 1964 and by the impugned order, his appeal was dismissed.

6. As can be seen, the petitioner was to be displaced since he had secured the lowest marks in the category and the petitioner in writ petition no. 7565 of 2008 was to be appointed in an open category displacing the respondent no. 7 therein. Perhaps, realizing the consequence that was coming in his way, the petitioner himself had offered to treat his appointment as a fresh appointment subject to his foregoing the benefits of his initial appointment. Paragraph no. 28 of the judgment makes this abundantly clear. In view of such concession, following were the observations made in paragraph no. 30 :-

“30. In our view since the Zilla Parishad is responsible for appointing respondent No. 7 who had applied under the OBC category by appointing him in the open category in view of the respondent No. 7 at that point of time competing with the other candidates in the open category and had illegally refused to appoint the petitioner in one of the posts earmarked for open category, the respondent No. 24 is likely to be affected by this order. In our view the request of the learned counsel for respondent No. 24 to direct the Zilla Parishad in these circumstances to appoint him to the said post reserved for Nomadic Tribe which appointment is at the discretion of the selection committee deserves to be accepted. We are, however, not inclined to grant any benefit of deemed date to the respondent No. 24 as the date of his initial appointment made by the Zilla Parishad. At the same time we are also not inclined to award any backwages to the

petitioner. At this stage learned counsel for the petitioner has fairly stated that his client does not press the relief of backwages if he is given the deemed date of the date of initial appointment. Statement is accepted.”

7. Admittedly, the petitioner had not challenged this judgment and order in writ petition no. 7565 of 2008 and we see no reason and justification for him to turn around and claim the benefits which he himself had surrendered in the peculiar fact and situation of the matter.

8. The writ petition is dismissed.

9. Rule is discharged.

10. Pending civil application is disposed of.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/