

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8781 OF 2021

Shri Akash Bagal Kamble

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Mr.Prashant Bhavake for Petitioner.

Mr.N.C. Walimbe, AGP for Respondent Nos.1 to 5.

Mr.Umesh Pawar for Respondent Nos.6 and 7.

**CORAM : SUNIL B. SHUKRE &
G.A. SANAP JJ.**

DATED : 9 MARCH 2022

P.C. :

. Heard. Rule. Rule made returnable forthwith. Heard finally, by consent.

2. The Petitioner has been appointed on the post of Peon on 17 June 2013 and the advertisement issued for filling of this post clearly showed that it was issued for filling up the vacancy of Peon in the reserved category. However, approval to the appointment of the Petitioner has been rejected by the Education Officer on the grounds that there was ban on recruitment of non-teaching staff as per G.R. dated 10 June 2010 and that new staffing patterns were issued vide G.R. dated 23 October 2013, to which stay was granted by G.R. dated 12 February 2015, and vide G.R. dated 28 January 2019 and thereafter, there was another staffing pattern issued for Class IV employees as per G.R. dated 11 December 2020. According to the Education Officer, the appointment of the Petitioner was

not consistent with these staffing patterns.

3. Learned Counsel for the Petitioner submits that these grounds are not supported, in any manner, by G.R. dated 10 June 2010 and also by the law laid down by this court in several judgments, one of which has been in the case of **Smt. Munoli Rajashri Karabasappa vs. State of Maharashtra and Others** (Writ Petition No.8587/2017) together with connected writ petitions decided on 10 July 2017. He also submits that the recruitment ban on the appointments of the non-teaching staff which existed was only for one year and thereafter, it was never extended. He further submits that all the other G.Rs. mentioned in the impugned order had prospective application.

4. Learned AGP, opposing the petition, submits that the impugned order is correct. He submits that as the appointment has been made at a time when recruitment ban was in place, approval to such appointment could not have been granted. He also submits that the management was required to follow up the new staffing pattern which it did not.

5. On going through the G.R. dated 10 June 2010, we find that the ban on recruitment was only for one year and this ban was never extended thereafter, there being no further G.R. issued on the subject. Therefore, the recruitment ban was not in force when the appointment of the Petitioner to the post of Peon was made with effect from 17 June 2013.

6. Then the question remains as to whether or not the management was required to follow the new staffing patterns, which came into force as per G.R. dated 23 October 2013 and 11 December 2020. The

answer is clearly no, as these G.Rs, it is settled law, would have had only prospective application and they would not apply retrospectively to any appointment made prior to issuance of those G.Rs. As said earlier, appointment of the Petitioner being of 17 June 2013 was made much prior to the issuance of G.Rs.

7. Although, the impugned order does not make any reference to the G.R. dated 2 May 2012, for the sake of clarity, it can be said that even this G.R. would have had no application to the appointment of the Petitioner, as it could be seen from the advertisement that the Petitioner was appointed to fulfill the backlog of reserved category candidates. This is the view taken by another bench of this court in the case of **Smt. Munoli Rajashri Karabasappa** (supra) and the view applies equally to the facts of the case. It may be added here that such appointment of the Petitioner on a reserved post was following the mandate of the G.R. dated 29 November 2010 which directed that a special drive be made for filling up the backlog of the reserved posts in Group C and Group D category herein and that by another G.R. dated 2 August 2011, it was directed that such special drive be completed by March 2013, which was further extended by G.R. dated 21 August 2013 till 31 March 2014. In the result, we find that the impugned order is unsustainable in law and it deserves to be quashed and set aside.

8. The petition is allowed in terms of prayer clause (b). Rule is made absolute in the above terms.

9. The name of the Petitioner be entered in the Shalarth system and by allotting to him Shalarth ID, salary with applicable arrears be released to him by the Respondents within six weeks from the date of

receipt of the copy of the order.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)