

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 2910/2021

DINESH S/O SUDAMJI VAIDYA ...VS... THE STATE OF MAHARASHTRA AND OTHERS
WITH

WRIT PETITION (ST) NO. 9236/2021

HEMRAJ S/O RAMRAOJI GHORSE ...VS... THE STATE OF MAHARASHTRA AND OTHERS

Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. T.S. Deshpande, Advocate for the petitioners
 Smt. H.N. Jaipurkar, Assistant Public Prosecutor for the respondents

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI, J.J.

DATED : 14/10/2022

Writ Petition (ST) No. 9236/2021 is not on Board. Taken on Board.

2. **Rule.** Rule made returnable forthwith. Heard the learned Counsel for the parties.

3. Smt. H.N. Jaipurkar, learned Assistant Government Pleader waives service of notice for the respondents in both the writ petitions.

4. The challenge raised in both these writ petitions is to the order dated 18.02.2020 passed by the Education Officer (Secondary) refusing to grant approval to the appointment of the petitioners on the post of Peon. Undisputedly both the petitioners came to be appointed on the post of Peon on 26.09.2012. Pursuant thereto, the petitioners joined their services with effect from 01.10.2012. Thereafter, the Management sought approval to their appointments. Since the said proposal was not considered, the petitioners had filed Writ Petition Nos. 1108/2018 and 1109/2018 and by order dated 03.12.2019, the Education Officer (Secondary)

was directed to decide the said proposal. By order dated 18.02.2020, the Education Officer (Secondary) rejected the proposal on the ground that the Staff Justification pursuant to the Government Resolutions dated 23.10.2013 to 28.01.2019 had not been considered. Being aggrieved, the petitioners have challenged the said rejection.

5. After hearing the learned Counsel for the parties, we find that the rejection of the approval is by considering the Government Resolutions issued after the petitioners' appointment. It would be necessary for the Education Officer (Secondary) to consider relevant instructions that were prevailing during the period when the petitioners were appointed. Government Resolutions issued subsequent to an appointment made could not have been relied upon to find fault with an appointment made earlier. This aspect has been considered in Writ Petition No. 2503/2020 (*Dilip Mohan Desai Vs. The State of Maharashtra and ors.*) decided on 16.12.2020 at the Principal Seat. Similarly, in Writ Petition No. 3620/2020 (*Dilip S/o Chandrabhan Mule Vs. The State of Maharashtra and ors.*) decided on 26.07.2022. After noting the aforesaid aspect, the Education Officer (Secondary) was directed to re-consider the proposal for grant of approval. In the present case, Government Resolutions issued after the petitioners' appointment have been considered.

6. In these facts, the interests of justice would be served by passing the following order:-

(i) The order dated 18.02.2020 passed by the Education Officer (Secondary) refusing to grant approval to the appointment of the petitioners is quashed and set aside.

(ii) The Education Officer (Secondary) shall re-consider the proposal for grant of approval to the appointment of the petitioners in the light of the observations made hereinabove. If any further clarification is sought by the Education Officer (Secondary), he is free to hear the petitioners as well as the Management in that regard.

(iii) Necessary exercise be completed within a period of two months from the receipt of the copy of this order. The decision taken on the proposal be communicated to petitioners.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(M. W. CHANDWANI, J.)

(A. S. CHANDURKAR, J.)

SANDIP
MAHADEV
GATE

Personal
Assistant to the
Hon'ble Judge
Digitally signed
by SANDIP
MAHADEV
GATE
Date:
2022.10.17
18:12:13
+0530