

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3128 of 2006

1. Rajesh Dnyaneshwarrao Patil,
Aged about 33 years, Occ. Nil,
R/o. At Post Mukramabad,
Damkodwar STD, Tah. Mukhed,
District Nanded.
2. Amol s/o Nivruttirao Gulhane,
Aged about 27 years, Occ. Nil,
R/o. At Post Mukramabad,
Damkodwar STC, Tah. Mukhed,
District Nanded.
3. Prakash Wamanrao Pise,
Aged 30 years, Occ. Nil,
R/o. C/o. Shri Vasantao Zade,
Master Colony, near Bus Stand,
Tah. And District Hingoli.
4. Vinod s/o Vitthalrao Golhar,
aged 31 years, Occ. Nil.
R/o C/o Shri Rajesh Beteraj,
At Post Gandhinagar, Tah. Biloli,
District Nanded.
5. Surendra s/o Nagorao Jadhav,
aged 24 years, Occupation-Nil,
R/o. C/o Shri Prakash Pawar,
At Post Tuppa, Tah. And District Nanded.
6. Nagnath Narhari Damkondwar,
aged about 27 years, Occu. Nil,
R/o. At Post Ravi, Tah. Mukhed,
District Nanded.

7. Vijay Yashwantrao Birajdar,
Aged 28 years, Occu.Nil,
R/o. At Post Talegaon, Tah. Bhokardan,
Distt. Jalna.

**Amended as
per order
dated
21.09.2006**

8. Anil s/o Vithalrao Sakharkar,
Aged about 33 years, Occ. Nil,
R/o. Jalka, Tq. Moregaon,
Distt. Yeotmal.

..... **PETITIONERS**

...VERSUS...

1. State of Maharashtra, through
the Secretary, Rural Development and Water
Conservation Department,
Mantralaya, Mumbai-400 032.
2. The Director of Health Services,
St.George's Hospital Compound,
Dental College Building, 4th floor,
P.D.Mello Road, V.T.Mumbai -400 001.
3. The Joint Director of Health Services
(Malaria and Philaria)
Pune-411 006.
4. The Chief Executive Officer,
Zilla Parishad, Wardha.
5. The Chief Executive Officer,
Zilla Parishad, Gondia.
6. The Chief Executive Officer,
Zilla Parishad, Amravati.
7. The Chief Executive Officer,
Zilla Parishad, Yeotmal.
8. The Chief Executive Officer,
Zilla Parishad, Nagpur.

..... **RESPONDENTS**

Shri Shriniwas Deshpande, Advocate for petitioners.
Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 to 3.
Shri A.Y.Kapgate, Advocate for respondent no.5.
Shri J. B. Kasat, Advocate for respondent no.6.
Shri Rahul Tajne, Advocate for respondent no.7.
Shri Majid Shaikh, Advocate for respondent no.8.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- JUNE 28, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

This writ petition was initially filed by seven petitioners seeking entitlement to the post of Multi-Purpose Health Worker (Male) with Zilla Parishad, Yavatmal. During the pendency of the writ petition, one more petitioner was impleaded as petitioner No.8. With the passage of time the claim of the petitioner Nos. 3 to 5 subsists while the claim of other petitioners stands satisfied. Hence the prayers as made in the writ petition are being considered qua the petitioner Nos. 3 to 5.

2. The issue with regard to appointment of Multi-Purpose Health Workers in the State of Maharashtra has been prosecuted through various writ petitions. The Maharashtra State Nursing and Health Workers Association had filed Writ Petition No.2681 of 2000 seeking appointment of those workers who were working under the Employment Guarantee Scheme on the post of Multi-

Purpose Health Worker. By the order dated 03.10.2000 this Court had passed an interim direction by which Zilla Parishad, Yavatmal was directed not to make further appointments on the vacancies meant for Multi-Purpose Health Workers. Thereafter the petitioners who were similarly situated to the present petitioners had filed Writ Petition No. 1087 of 2001 praying that they be granted such appointment. This Court by the order dated 22.10.2002 directed consideration of the said petitioners for appointment on the post of Multi-Purpose Health Worker by way of an interim arrangement. In that writ petition a further order was passed on 26.04.2006 directing the Zilla Parishad to consider the candidature of the petitioners while making appointments on the post of Multi-Purpose Health Worker. Pursuant to these orders, the Zilla Parishad on 14.06.2006 issued various appointment orders to the petitioners therein and hence those writ petitions were withdrawn on 13.07.2006. Yet another writ petition was filed being Writ Petition No. 3772 of 2008. By the order dated 02.12.2008 this Court directed grant of appointment to the petitioner Nos. 1, 2 and 8 herein as Multi-Purpose Health Workers. Since the claim of the petitioner Nos.3 to 5 in this writ petition was pending, the Chief Executive Officer on 13.07.2011 sought guidance from the State Government in the matter of appointing the remaining petitioners with Zilla Parishad, Yavatmal. When this writ petition was heard on 13.03.2020 a direction was issued to the State Government to take a decision on the said request dated

13.07.2011. Ultimately, on 06.09.2021 a decision was taken by the State Government in which it was stated that from the sanctioned post of Multi-Purpose Health Workers there was a recruitment in excess made on nine posts. For that reason it was stated that it would not be possible to grant any appointment to the petitioner Nos. 3 to 5.

3. After receipt of the aforesaid response from the State Government the said petitioners have then amended the present writ petition and it has been pleaded that on 27.10.2021 about 38 health workers with Zilla Parishad, Yavatmal had been promoted to the post of Health Assistant. Hence those 38 posts were vacant. In paragraph 20-I it has been pleaded as under:

“20-I : The petitioners say and submit that the 12 petitioners in Writ Petition No.1087/2000, appointed as M.P.W.(Male) in pursuance to the orders of this Hon’ble Court are also promoted to the post of Health Assistant in the month of October, 2021 in the 40% quota in the Rules. Similarly, only S.S.C. passed (untrained) candidates are also appointed in this 40% quota under the Rules. Not only that the candidates from Gram Panchayat who are untrained and not qualified are also appointed to the post of M.P.W.(Male). The petitioners beg to place on record the list of 38 candidates who were promoted to the post of Health Assistant from the post of M.P.W. in the month of October, 2021 by the respondent No.7. The said order dated 27.10.2021 is annexed to this petition and marked as Annexure-S.

It is thus clear that the respondent no.7 and respondent no.1 are deliberately and wilfully denying the

rightful claim of the petitioners to be appointed as M.P.W. (Male). There are posts available with all the respondents, and particularly with the respondent no.7. The right to be appointed to the said posts in favour of the petitioners exists since the year 2006. Accordingly they need to be granted appointment to the said posts forthwith”.

4. In the light of these pleadings this Court on 16.03.2022 referred to the same and granted an opportunity to the respondents including the Zilla Parishad to respond to the said assertions. Thereafter on 05.04.2022 the following order was passed :

“On 16 March 2022, after recording the contention of the petitioners that the amendment was carried out in the petition, petition was adjourned to enable the respondents to take instructions as regards this aspect.

2. The learned Assistant Government Pleader states that the instructions are awaited.

3. The petition is pending since the year 2006 and cannot be kept on being adjourned.

4. By way of indulgence, hearing of this petition is deferred to 26 April, 2022.

5. By the said date, if not reply is filed by the respondents to controvert the assertions made by the petitioners in paragraph (20-I) (amended portion), the Court will presume that the same is accepted by the respondents and will pass appropriate order.”

Thereafter on 26.04.2022 at the request of the learned counsel for the Zilla Parishad a further time was granted to file reply to the amended pleadings and the writ petition was posted to 07.06.2022. Till this date, no affidavit has been

filed by the respondents including the Zilla Parishad controverting the averments made in paragraph 20-I of the writ petition. Hence as observed in the order dated 05.04.2022, it will have to be presumed that the assertions made by the petitioners in paragraph 20-I have been accepted by the respondents.

5. In the aforesaid facts, it is clear that the petitioner Nos. 1, 2 and 6 to 8 have already been appointed as Multi-Purpose Health Workers. The petitioner Nos. 3 to 5 could not be so appointed as according to the Zilla Parishad there had been nine excess appointments. According to the petitioner Nos. 3 to 5, 38 Health Workers with the Zilla Parishad have been promoted which would thus mean that there were 38 vacancies available. Even giving room for nine excess appointments made to be adjusted, it is clear that the petitioner Nos. 3 to 5 being only in three number they can also be accommodated on the post of Multi-Purpose Health Workers. Undisputedly, the petitioner Nos. 3 to 5 are similarly situated as the other petitioners and there is no reason to deprive them of such relief.

6. Hence for the aforesaid reasons, the writ petition is allowed in terms of prayer clause (i-a) as amended, which reads as under :

(i-a) by way of issue of Writ or Certiorari, quash and set aside the communication dated 06.09.2021 (Annexure-N) issued by respondent no.1,

the Secretary, State of Maharashtra, Rural Development and Water Conservation Department, Mumbai and grant appointment to the petitioners/applicants to the post of Multi-Purpose Health Worker (Male), forthwith.”

The respondent no.7 shall comply with the aforesaid directions within a period of four weeks from the receipt of copy of this judgment.

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

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..