

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

CONTEMPT PETITION NO. 243 OF 2021

IN

CONTEMPT PETITION NO. 161 OF 2020

IN

WRIT PETITION NO. 7454 OF 2017 (DECIDED)

Shri Tatyia s/o Pundlik Kolhe

..Vs..

Shri Kundan Kumar, Private Secretary & Ors.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. C.D. Wasade, Advocate for the Petitioner.

Mr. N.S. Deshpande, DSGI with Mr. Saurabh A. Chaudhari, Advocate for Respondent No.4.

CORAM : **SANDEEP K. SHINDE AND**
MRS. VRUSHALI V. JOSHI, JJ.

DATE : **23rd DECEMBER, 2022.**

Petitioner and his three brothers were entitled to employment as Project Affected Persons ('PAPs' for short). His two brothers were provided employment. However, Petitioner was not provided employment, though eligible, reason being, he attained the age of 57 year. In the circumstances, he applied for transfer of proposed employment in the name of his son. Thus, he sought directions to the Collector and Deputy Collector (Rehabilitation) in Writ Petition No.7454/2017, to substitute the name of his son in place of himself, in the list of persons to be provided employment on the basis of the certificate for resettlement.

2. Division Bench of this Court *vide* oral judgment dated 26th August, 2019, allowed the petition in the following terms;

“the name of the son of the Petitioner i.e. Anil s/o Taty Kolhe be included in place of the Petitioner who has attained the age of superannuation and could not get the employment. If the vacancies are available, the Respondent Nos.1 to 3 i.e. Union of India; IOFS-DGOF and Chairman Ordnance Factory Board; and General Manager, Ordnance Factory, can only implement the list of eligible candidates without raising any objection”. (emphasis supplied)

3. Since, there was no advancement in the case, at the end of Respondents, in October, 2010, Petitioner moved a Contempt Petition No.161/2020, against the Respondents (officials of the Ordnance Factory) for non-compliance of the directions/order dated 26th August, 2019. In the said Contempt Petition, on 2nd March, 2021, the following order was passed;

“Heard.

2. The grievance of the petitioner in the instant Contempt Petition is that the order passed by this Court on 26/08/2019 in Writ Petition No. 7454/2017 has not been complied with by the respondents, and thereby committed contempt of Court. For ready reference, para 6 of the said order is reproduced below :

“6. In the result, this writ petition is allowed. The name of the son of the petition i.e. Anil s/o Taty Kolhe be included in place of the petitioner who has attained the age of superannuation and could not get the employment. If the vacancies are available, the respondent Nos. 1 to 3 can only implement the list of eligible candidates without raising any objection.”

3. Today, Shri Aurangabadkar, learned ASGI, filed the reply affidavit on behalf of the respondents stating therein that the name of the petitioner, if found eligible as per the procedure prescribed under the Maharashtra Government resolutions, can only be considered for the employment against the vacancies of the year 2019 and onwards.

4. In this view of the matter, we are satisfied that the aforesaid order has been duly complied with. Hence, nothing further remains to be adjudicated upon in the instant Contempt Petition.

The same is disposed of accordingly.”

4. Clause 3 of the order dated 2nd March, 2021 suggests the Petitioner if found eligible, would be appointed, as per procedure set out in the Resolutions of State of Maharashtra.

5. As a step towards compliance of order, on 22nd April, 2021, the Works Manager/Administration of Ordnance Factory requested the Chief Medical Officer In-charge to examine the Petitioner, who has been selected for employment with the Ordnance Factory, Ambazari, Nagpur.

6. The Procedure regulating for absorbing Project Affected Persons in employment set out in Government Resolutions/Circulars.

The Government Circular dated 13th September, 2000, mandates District Collector;

- i. to maintain the register of Project Affected Persons;
 - ii. to draw and prepare wait list of Project Affected Persons;
- AND mandates Appointing Authority not to absorb/employ Project Affected Persons directly on their establishments and further mandates that Appointing Authority shall fill in the vacancies earmarked for Project Affected Persons from the wait list of PAPs, kept and maintained by the Collector.

7. The Circular conveys that appointment of Project Affected Persons shall be as per the Service Rules and once a PAP is appointed, his name from the list of PAPs shall be deleted. This Circular was followed by Government Resolution dated 27th October, 2009, which was issued pursuant to the decision of the Full Bench in the case of *Rajendra Pandurang Pagare & Anr. Vs. The State of Maharashtra & Ors. [MANU/MH/0731/2009]*. The issue referred to the Full Bench in *Rajendra Pandurang Pagare* (supra) was;

“whether Project Affected Persons can be appointed without advertising the posts, ignoring their qualifications and merits.”

8. In paragraph 41, the Full Bench has observed as under;

“41. No doubt, that under the Government Circulars, the Collectors are also required to sponsor the names of eligible candidates to the recruitment authority. However, since we have already held herein above, that the district-wise reservation is not permissible under the Constitution, the candidates from the other districts, who are project affected persons, would also be entitled to compete with the candidates who are sponsored by the Collector. In the absence of the advertisement, it will not be possible for them to get knowledge about recruitment process initiated in the areas beyond their district. We, therefore, find that in order to ensure the equality of opportunity which is guaranteed in the matter of employment under Article 16 of the Constitution, it would be necessary that the posts reserved for project affected persons are advertised so that all the eligible candidates can submit their applications and get an opportunity to compete with others in their category.”

Accordingly, issue was answered in the following terms;

“Project Affected Persons cannot be appointed without advertising the posts, ignoring their qualifications and merits.”

9. Thus, in view of the Government Circular dated 13th September, 2000 and Resolution dated 27th October, 2009, the Respondents required the Collector to supply/provide wait list of the PAPs; however, Respondents’ requisition was not responded to by the Collector. As a result, the Respondents could not appoint the Petitioner and thus not appointed. Feeling aggrieved thereby, Petitioner moved instant contempt petition against the Respondents, complaining that the Respondents disobeyed the order dated 26th August, 2019.

Reply of Respondents

10. The Respondents would deny the allegations and contend that though they were willing to offer employment to the Petitioner being PAP, subject to procedure prescribed under the Government Resolutions, but for want of response from the Collector, they could not employ the Petitioner and, as such, there was no disobedience of the order dated 26th August, 2019, passed in Writ Petition No.7454/2017.

11. In consideration of the facts of the case and order dated 2nd March, 2021, passed in Contempt Petition No. 161/2020 read with above Government Circulars and the Government Resolutions, we are of the view that Respondents have not

committed breach or disobeyed the order dated 26th August, 2019.

12. Though we have reached the above conclusion, learned counsel for the Petitioner would urge that, Civil Application (CAW) No.1676/2021 moved in Writ Petition No.7454/2017 (disposed of petition), Respondents admitted, that they had not employed any PAP since 40 years. In view of this fact, learned Counsel would urge that until a PAP candidate is appointed upon following the procedure contemplated in Government Resolution dated 27th October, 2009, the Respondents be directed to employ the Petitioner on their establishment, upon such terms and conditions, as they deem fit and proper.

13. We are conscious of our limitation in contempt jurisdiction and therefore, request of the Petitioner cannot be acceded to; however, Petitioner-PAP may make representation to the Respondents seeking temporary appointment. In case, the Representation is made, the Respondents may consider the same and may appoint the Petitioner being PAP for such period and on such conditions, as they may deem fit and proper.

14. With aforesaid observations, the contempt petition is dismissed and disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.) (SANDEEP K. SHINDE, J.)

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