

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

WRIT PETITION NO.8242 OF 2019

Mrs. Arati w/o Satish Gadge
(Maiden Name Ku. Arati Sidharth Dukare),
Aged about 31 years,
Occupation: Assistant Teacher,
Nagar Parishad, Yavatmal,
Tahsil and District Yavatmal
(Maharashtra State). **PETITIONER**

...V E R S U S...

- 1 Hon'ble Regional Director of Municipal
Administration (RDMA) and Divisional
Commissioner, Amravati, having office at
Divisional Commissioner's Office, Camp,
Amravati, Tah. and Dist. Amravati (Maharashtra).
- 2 Nagar Parishad, Yavatmal, through its
Chief Officer, having office at Nagar
Parishad, Main Line, Yavatmal,
Tahsil and District – Yavatmal (Maharashtra).
- 3 Nagar Parishad, Wani, through its
Chief Officer, having office at Nagar
Parishad, Wani, Tahsil and District
Yavatmal (Maharashtra).
- 4 Zilla Parishad, Yavatmal, through its
Chief Executive Officer / Education Officer
(Primary) having office at Yavatmal,
Tahsil and District Yavatmal (Maharashtra).
5. Dy. Director of Education,
Amravati Region, Amravati,
Tahsil and District Amravati
(Maharashtra). **RESPONDENTS**

Mr. H. D. Dangre, Advocate for Petitioner.
Mr. S. M. Ukey, Addl. GP for Respondents 1 & 5/State.
Mr. Shreyas S. Bhalerao, Advocate for Respondent 2.
Mr. S. A. Sahu, Advocate for Respondent 3.
Mr. Rahul Tajne, Advocate for Respondent 4.

CORAM: **ROHIT B. DEO, J.**
DATE: **23rd FEBRUARY, 2022.**

ORAL JUDGMENT:

Heard Mr. H. D. Dangre, the learned counsel for the petitioner, Mr. S. M. Ukey, the learned Additional Government Pleader for the respondents 1 and 5/State, Mr. S. S. Bhalerao, the learned counsel for the respondent 2, Mr. S. A. Sahu, the learned counsel for the respondent 3 and Mr. Rahul Tajne, the learned counsel for the respondent 4.

2. The petitioner responded to an advertisement published by the Maharashtra Rajya Pariksha Parishad inviting applications for appointment to the post of Shikshan Sewak (Primary) on the establishment of the Zilla Parishads and Nagar Parishads. The petitioner applied for appointment to the post of Shikshan Sewak (Primary) reserved for the Scheduled Caste category. She successfully cleared the written examination

securing 147 marks out of 200 and was interviewed in which she fared well and was selected for the post of Shikshan Sewak (Primary) reserved for the Scheduled Caste.

3. The Nagar Parishad, Yavatmal vide order dated 22.02.2011 appointed the petitioner as Shikshan Sewak (Primary). She was posted at Nagar Parishad Prathmik School 12, Netaji Nagar. The appointment order dated 22.02.2011 incorrectly referred to as the appointment from 'Open Category'. The petitioner submitted a representation dated 28.03.2012 to Nagar Parishad, Yavatmal asserting that she was selected and appointed for, and to, post reserved for the Scheduled Caste category. In February, 2013 petitioner was declared surplus on the premise that her appointment is from Open Category. The petitioner made further representations dated 14.02.2013 and 19.09.2013 requesting Nagar Parishad, Yavatmal to correct the mistake in the record and to show her appointment as from the Scheduled Caste category, and she followed up with representation dated 19.09.2013 to the Yavatmal Zilla Parishad.

4. The Zilla Parishad, Yavatmal realized the mistake and

vide communication dated 24.09.2013 asked the Nagar Parishad, Yavatmal to correct the mistake and show the appointment of the petitioner as from the Scheduled Caste category.

5. The Nagar Parishad, Yavatmal did not heed the instructions issued by the Zilla Parishad and the petitioner was transferred to Pandharkawada on absorption on the premise that her appointment is from the Open Category.

6. The petitioner addressed several representations to the Nagar Parishad, the Commissioner, Backward Class Cell, and other Authorities. Ultimately, the Deputy Director of Education directed the Nagar Parishad that the appointment of the petitioner be shown from the Scheduled Caste category and that she be retained on the establishment of Nagar Parishad, Yavatmal. The petitioner contends that while she was retained at Yavatmal, the concerned records were apparently not corrected despite the directions issued by the said authority.

7. The petitioner pursued her case with the Nagar Parishad, and succeeded in obtaining a specific endorsement on the representation vide which the Nagar Parishad directed

correction of the record. The petitioner contends that her Service Book was not corrected despite the Nagar Parishad's directives.

8. The petitioner then approached the Zilla Parishad and apart from correction in the Service Book, she sought permanency. The Nagar Parishad, Yavatmal did confer permanency by appointing the petitioner as Assistant Teacher (Primary) vide order dated 02.12.2014, and in the said order repeating the earlier mistake the petitioner was shown as appointed from the Open Category.

9. The petitioner addressed several representations between 24.09.2013 and 27.11.2018 to various authorities and ultimately the Nagar Parishad, Yavatmal conveyed that the petitioner would be entitled to be treated as appointed from Scheduled Caste category subject to the approval by the Deputy Director of Education, Amravati Region, Amravati and Additional Commissioner, Amravati. However, what was additionally conveyed was that the petitioner shall be treated as from reserved category only from the date of the submission of the Caste Validity Certificate and not from the date of the appointment. The Deputy Director of Education, to petitioner's shock and surprise, issued

communication dated 07.12.2018, declaring the petitioner as surplus and directed the Nagar Parishad to transfer and absorb her at Nagar Parishad, Wani. Nagar Parishad, Yavatmal issued consequential communication dated 17.12.2018 purporting to relieve the petitioner from Nagar Parishad, Yavatmal and directing her to join duty at Nagar Parishad, Wani.

10. The petitioner perceived that the only reason she is held surplus is that the service record is not corrected and her appointment is shown from the Open Category. She submitted representation dated 15.12.2018 which was acted upon by the Deputy Director of Education who instructed the Nagar Parishad, Yavatmal to pay salary even if the petitioner is relieved, till the petitioner joins another establishment.

11. Aggrieved by her transfer and absorption order, the petitioner preferred an appeal under Section 318 of the Maharashtra Municipal Council, Nagar Parishad and Industrial Township Act, 1965 (Act) before the Regional Director of Municipal Administration (RDMA). The said appeal was dismissed by the RDMA vide order dated 29.07.2019. According to the petitioner, due to certain wrong and indeed misleading assertions

made by the authorities in response to the memo of appeal, the RDMA apparently doubted the genuineness of the appointment order/s.

12. It is in this backdrop, that the petitioner is invoking writ and supervisory jurisdiction assailing the order of declaration of surplus and transfer and absorption and the order of rejection of appeal.

13. It would not be necessary to delve deeper in the factual matrix, since the Nagar Parishad, Yavatmal has fairly filed an affidavit dated 14.02.2022 tendering an unqualified apology for the incorrect statement in the earlier affidavit. The affidavit dated 14.02.2022 which is sworn by Smt. Madhuri M. Madavi, who is the Chief Officer of the Municipal Council, reads thus:

1. At the outset, the answering respondent tenders unconditional apology for their compliance affidavit filed in view of the order dated 11/01/2022. It is submitted that there are four posts of Scheduled Caste Category are vacant from backlog with the answering respondent. However, as per approved roster for the year 2015, there were total 15 posts were declared surplus. Therefore, on 30/10/2015 Assistant Commissioner, Backward Class, Amravati Division, Amravati issued directions 'when the surplus post become vacant, post from backlog should be filled

up'. The copy of same is annexed herewith for ready perusal of this Hon'ble Court and marked as DOCUMENT NO.1.

2. It is further submitted that as per approved staffing pattern for the year 2020-21 there are 75 posts of Assistant Teachers are approved for Marathi Medium School of answering respondent and all these posts are presently filled up.

3. It is submitted that so far as issue relating to payment of arrears of salary is concerned petitioner was declared surplus from open category, respondent No.5 Deputy Director of Education by its letter dated 02/01/2019 Annexure-42, informed that if the excess teachers found than approved staffing pattern no salary will be drawn. That, the claim in respect of appointment of the petitioner was pending, therefore, answering respondent sought guidance by its letter dated 18/01/2019 from respondent No.5. The copy of letter is on record at Annexure-43 Page No.74. Therefore, it is submitted that it is the jurisdiction of respondent No.5 to issue appropriate direction in respect of payment of arrears of salary to the petitioner.

14. In the order dated 24.09.2021 this Court directed the Nagar Parishad, Yavatmal thus:

1.

2.

3.

4. In view of the above, the respondent No.2, is therefore, directed to send a proposal, in consonance with the selection of the petitioner to the respondent No.5, who shall issue appropriate clarification in this regard correcting the situation which has occurred in the appointment order of

the petitioner by showing her from the Open category. The said action, be completed within a period of two weeks from today. Once such correction is done in the appointment, the consequences to follow as a result of such correction, would occur in light of which appropriate statement be made by the respondents in that regard.

15. The subsequent order dated 29.10.2021 records that the Assistant Government Pleader has tendered pursis placing on record the clarification issued by respondent 5 – Deputy Director of Education, Amravati Region, Amravati that the appointment of the petitioner is from Scheduled Caste category.

16. This Court in its order dated 18.11.2021 recorded thus:

List the matter on 2nd of December, 2021, for the respondents to take corrective measures, in view of the Pursis dated 28.10.2021 and the communication of the same date, annexed herewith.

17. On 21.12.2021 this Court recorded that since the appointment category is duly corrected, further steps are required to be taken by respondent 5.

18. This Court then passed the following order

on 11.01.2022:

The petitioner was declared surplus assuming her appointment to be from the Open Category.

2. In view of the directions issued by the Court, the error in the appointment order and corresponding record is corrected to show the appointment of the petitioner from the Scheduled Caste Category.

3. Having corrected the order of appointment and the contemporaneous record, the council will have to determine whether the petitioner could have been treated as surplus.

4. The petitioner shall appear before the Chief Officer, Municipal Council on 17.1.2022 and shall be given an opportunity of hearing.

5. The determination shall be made within the next ten days and an appropriate affidavit shall be placed on record.

19. While certain incorrect statements, as is now admitted by the respondent 2 were made in the compliance affidavit, the last affidavit clarifies that as on the relevant date four posts of Scheduled Caste category were vacant from the backlog. It is admitted that the petitioner was declared surplus treating her as belonging to the Open Category.

20. In view of the fair stand, albeit taken after some delay, of the contesting respondent/s, the petition will have to be

allowed since the petitioner could not have been declared surplus.

21. The petition is allowed in terms of prayer clause (i), with all consequential reliefs including the payment of salary which may have been withheld. If the petitioner is entitled to any amount towards unpaid salary, the same shall be paid within thirty days, failing which the amount shall attract interest at the rate of 9% per annum till the actual payment.

JUDGE

NSN