

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12205 OF 2022

SANTOSH RAMRAO PILLEWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Shri Govind G. Suryawanshi, Advocate for the petitioner.
Shri S.G. Sangle, AGP for respondent No.1/State.
...

CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 08th February, 2023

Per Court :-

1. The petitioner has put forth prayer clauses B as
under :-

“B) *By issuing writ or any other appropriate order or directions, in the like nature, to quash and set aside the impugned communication dated 04.04.2022 issued by respondent No.2 Exhibit - I in respect of rejection of the claim of the petitioner and respondents be directed to consider the claim of the petitioner for the existing (old) pension scheme and existing General Provident Scheme would be made applicable.*”

2. The contention of the petitioner is that an advertisement for recruiting Agricultural Assistants was

published sometime in 2003. The select list was not declared, according to the petitioner. He received the communication dated 08.07.2004 intimating him that his name “is being actively considered” for the post of “Agricultural Assistant” from the Scheduled Tribe category. He was called upon to submit his caste validity certificate. He was informed that his appointment would be subject to the submission of the caste validity certificate and will depend upon the availability of the vacancy at the time of issuance of such an order. Admittedly, the petitioner received the caste validity certificate on 02.05.2006. He was issued with the appointment order on 09.05.2006. He reported for duties subsequently. His claim is that similarly situated selected candidates were appointed in July, 2004. The petitioner’s appointment was delayed since he did not have the validity certificate.

3. The issue before us has its origin in the Government Resolution dated 31.10.2005, which indicates that those employees, who have been appointed prior to 01.11.2005, would be eligible for the old pension scheme and those appointed thereafter, would be covered by the Defined Contributory Pension Scheme. This Court has considered this aspect in the

judgment delivered in *Shri Snehal S/o Baburao Kuwar vs. The State of Maharashtra and others*, Writ Petition No.12622/2022 decided on 11.01.2023 (Aurangabad Bench) and has concluded as under:-

- “7. *A similar issue fell for consideration of this Court (Coram: Ravindra V. Ghuge & Sandipkumar C. More, JJ.) in Dnyaneshwar Balasaheb Sonawane and Others V/s. State of Maharashtra and others; (2022) 6 Mh.L.J. 64. In the said case, though the recruitment process commenced prior to 01.11.2005, this Court did not accept the submissions of the petitioner that, as the recruitment process commenced prior to 31/10/2005, the commencement date is significant. Mere commencement of recruitment process may not be enough for the reason that unless a candidate is selected and appointed, it cannot be concluded that he has entered employment. It is trite that mere selection does not give a right for appointment. Until an appointment order is issued, the candidate cannot presume that he has been appointed in service.*
8. *In Vijay Kumar Misra V/s. High Court of Judicature of Patna; 2016 9 SCC 313, it was concluded in paragraph no. 24 that there is a subtle distinction between “selection” and “appointment”. In service jurisprudence, relying on Praful Kumar Swain V/s. Prakash Chandra Misra; 1993 Supp 3 SCC 181, the Hon’ble Supreme Court concluded that when the framers of the constitution have used the word “appointed” in Clause (2) of Article 233 for determining the eligibility of a person with reference to his service, then it is not possible to read the words “selection” or “recruitment” in its place. In other words, the word*

“appointed” cannot be read to include the word “selection”, “recruitment” or “recruitment process”. In Praful Kumar Swain (supra), the Hon’ble Apex Court has concluded that ‘recruitment’ is merely an initial process which may eventually lead to appointment. Recruitment process or Selection, in itself does not amount to appointment.

9. *It does not call for any debate that the recruitment process is purely initiation of the process and the culmination of such process may eventually lead to appointing a candidate in employment. The issuance of an appointment order is the final stage in the entire recruitment process, selection being the penultimate stage. Once an order of appointment is issued, the recruitment process ends.*
10. *Considering clause-2(A) of the Government resolution dated 31.10.2005, which is relevant to this case, this Court concluded in Dnyaneshwar Sonawane (supra), as under:-*

“15. There is no dispute or contra argument that Marathi language is the official language insofar as the Maharashtra State is concerned. The disentitlement clause from being eligible for the old pension scheme, in the Marathi version is in the Government Resolution dated 31.10.2005, which is at page 385 of the petition paper book. Clause 2(A) of this Government Resolution reads thus:-

“२. (अ) शासनाने आता असा निर्णय घेतला आहे कि, शासन सेवेत १ नोव्हेंबर २००५ रोजी किंवा त्यानंतर नियुक्त होणाऱ्या कर्मचाऱ्यांसाठी, सध्या अस्तित्वात असलेल्या निवृत्तीवेतन योजनेऐवजी, केंद्र शासनाच्या धर्तीवर, नवीन “परिभाषित अंशदान निवृत्तीवेतन योजना” (Defined Contribution Pension Scheme), खाली नमूद केल्यानुसार, लागू करण्यात येईल.”

16. *The Marathi word “नियुक्त” appearing in*

the Government Resolution dated 31.10.2005 means appointed. The Marathi word “नियुक्त” does not mean recruitment or process of recruitment. The word “recruitment” in Marathi means “भरती” which includes the recruitment process, which is the process undertaken for selection and appointment of candidates. We are, therefore, of the view that the Marathi version indicating the word “appointment” would lead to the interpretation of the disentitlement clause as being appointed on or after 01.11.2005. Be that as it may, even if the contention of the learned advocate for the petitioners is accepted, the recruitment process ended on 19.12.2005, which is much after the cut off date 01.11.2005.”

11. *It was thus held that the word “नियुक्ती” as appearing in vernacular in clause 2(A) would mean appointment of a candidate. “निवड” is a Marathi word which means selection. “नियुक्ती” would mean that the candidate has been appointed on a post.*
12. *In Kishor Asaram Nirwal and Others V/s. State of Maharashtra and Others 2018; SCC OnLine Bom 21244, the Petitioner was issued with an appointment order on 26.10.2005. Owing to the Diwali Vacation, he was called upon to report for duties up to 16.11.2005. This Court, therefore, concluded that the petitioner would not be covered by the Government resolution dated 31.10.2005.”*

4. The petitioner submits that three persons, namely, S.S. Rathod, K.D. Kausadikar and G.P. Bhosale, who were selected under the same advertisement, were issued with the appointment orders on 28.07.2004, 16.08.2004 and 07.08.2004,

respectively. Since the petitioner did not have the validity certificate, his appointment order was issued on 09.05.2006 after tendering the validity certificate. He places reliance upon the Government Resolution dated 16.08.2000, wherein, it has been held that no person, who is selected and appointed on a post reserved for the backward category, would be appointed unless he has a validity certificate. However, if the production of such validity certificate is likely to take time due to the pendency of the claim, the candidate can be offered employment pending the issuance of such validity certificate.

5. Notwithstanding the Government Resolution dated 16.08.2000, the fact remains that the petitioner has been appointed on 09.05.2006 and, therefore, his appointment cannot be termed as being crystallized prior to 01.11.2005. If he was aggrieved by appointment of the other candidates, who were selected under the same advertisement, the petitioner should have raised the grievance and could have either approached the superior authority or even this Court for seeking reliefs.

6. Moreover, having joined employment and having availed of the benefits of such service after the Defined Contributory Pension Scheme became effective and after waiting

for 16 years, this petition cannot be entertained. The petitioner should have approached this Court immediately after the other selected candidates were issued with the appointment orders. Having spent 16 years without a demur and raising the grievance today with regard to the coverage of the Government Resolution dated 01.11.2005, that we do not find that this petition could be entertained after 17 years.

7. The petitioner contends that the impugned order is dated 04.04.2022 and, therefore, no delay is caused. We cannot accept this submission for the simple reason that the petitioner tendered his representation dated 22.10.2021, which is still after 15 years of joining duties. The filing of the representation after 15 years, would not bring this case within the ambit of “reasonable period” to file a writ petition.

8. In view of the above, this Writ Petition is dismissed.