

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

947 WRIT PETITION NO.8302 OF 2022

SHARAD BAPU GUNJAL AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

...

Advocate for Petitioners : Mr. Satish B. Parnere.

AGP for Respondent/State : Mr. S. G. Karlekar.

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

DATE : 05th April, 2023.

Per Court:

1. On 10th October, 2022, we had passed the following order:-

“1. The petitioners have put forth prayer clauses B, C and D as under :-

“B) Issue writ of mandamus or a writ in the nature of mandamus or direction in the like nature directing the respondents to allow the petitioners to participate in the selection process of empanelment for the post of Managing Directors to be appointed in the Cooperative Sugar Factories.

C) Direct the respondents during pendency of this petition to permit the petitioners to participate in the selection process for empanelment for the post of Managing Director to be appointed in the

Cooperative Sugar Factory in the State.

D) Direct the respondents during pendency of this petition to permit the petitioners to participate in the preliminary examination to be going to be held in selection process for empanelment for the post of Managing Director to be appointed in the Cooperative Sugar Factory in the State.”

2. Issue notice to the respondents returnable on 21.11.2022. The learned AGP waives service of notice on behalf of respondent Nos. 1 and 2.
3. Let the affidavit in reply be filed at least one week prior to the returnable date in this matter.
4. All office objections to be removed within four weeks.
5. Needless to state, if the selection process is completed during the pendency of this petition, the same shall be subject to the result of this Petition.”

2. Considering the urgency today, we assembled in the Court so as to hear this Petition, during the lunch recess.

3. The concerned advertisement enables all Heads of respective Departments to appear for the preliminary exams, which are being held today from 02:00 pm onwards. Clause 5.9 of the advertisement indicates that a candidate possessing a minimum graduation degree, should have worked for at least 5 years in a sugar

factory as head of a particular department or must be portfolio head (Vibhag Pramukh or Khaate Pramukh).

4. The Petitioners have been disallowed from appearing for the examination by Respondent No.3 agency, unconnected with the sugar factories in which the Petitioners are working, and which is conducting the exams for and behalf of Respondent No.2 – Commissioner of Sugar, Maharashtra State Pune. Each of these Petitioners, is an LL.B / graduate. The reason for disallowing them from appearing in the exams, is that they are not heads of any department and the Indalkar Committee Recommendations, which have prepared the staffing pattern, do not include a Welfare Officer or a Labour Officer or a Law officer, as a head of any particular department.

5. The Petitioners approached Respondent No.2 – Commissioner of Sugar on Monday, 3rd April, 2023 seeking his indulgence on their representations. Tuesday, 4th April, 2023, was a public holiday. These representations are pending decision. We have taken up this Petition today, on account of an urgency expressed by the learned advocate for the Petitioners.

6. The Petitioners have relied upon an order passed by this Court on 2nd August, 2005 in Writ Petition No.512 of 2004 filed by **P. G.**

Honrao Vs. State of Maharashtra & Ors., at the Principal Seat. In paragraph No.4, this Court has recorded that “*the petitions point out that all that is required is that the person concerned must be a head of the Department*”. It is further recorded that the Petitioners contended that “*the departments which are to be considered are not specified*”. This Court noted in paragraph No.9 that “*both the petitioners have made out a case of discrimination against respondent No, 3 as well as respondent No.2*”. It is then held that “*no discrimination can be made against the persons who are otherwise Heads of Department and qualified*”. In paragraph No.11, this Court ordered that “*the Petitions are allowed and directed Respondent No.2-Commissioner for Sugar to hold a written test and thereafter, an interview of the two petitioners as well as other persons who may be Heads of the Legal Department or the Safety Department as well as Agricultural Department*”. It was also ordered that, other heads of concerned departments also be allowed to appear for the written test.

7. Keeping this order in view, this Court, at the Principal Seat, passed an order on 26th March, 2015 in Writ Petition No.8192 of 2004 and other connected matters, filed by **Kailash Subhash Wani & Ors. Vs. Commissioner of Sugar, State of Maharashtra & Ors.**, which were filed in between 2005 to 2015, thereby concluding that “*all the heads of the departments who may be heads of the Legal Department*

or the Safety Department as well as Agricultural Officers are entitled to participate in the process of empanelment as Managing Directors". In the above backdrop, it is absolutely clear that a HOD has a right to appear for the examination.

8. The Petitioners contend that the law is settled and we should straightaway pass an order permitting them to appear for the exams. The learned AGP submits that the facts involved in this case are quite different. Pursuant to the order of this Court on 26.03.2015, the State of Maharashtra has accepted the Indalkar committee staffing pattern. None of these Petitioners are HoD of any department.

9. We have perused the experience certificates issued by the various sugar factories, to the Petitioners.

In the case of Sharad Bapu Gunjal – Petitioner No.1, a certificate issued by the MD dated 7th June, 2022, indicates that he is working as a *"Law Cum Labour and Welfare Officer in our organisation since 01/01/2010. He is the Head of Legal and Labour (HR) Department/Section"*.

In case of Ritesh Babanrao Temak – Petitioner No.2, the MD of the sugar factory has stated that *"he is working in Labour and Time Department as Labour and Welfare Officer and is Khate Pramukh and is working as Secretary (Special Grade) and Labour and Welfare*

Officer and Legal Officer”.

With regard to Sunil Laxmanrao Shinde – Petitioner No.3, the MD of that sugar factory has stated that “*the Petitioner is working as Legal Officer and is HOD*”.

10. In the above backdrop, we called upon the learned Advocate for the Petitioners to identify the various departments of the sugar factories and whether a legal department exists, and if yes, as to how many employees are working in the said department and when was he issued with the order of designation or appointment as the HOD. The learned Advocate for the Petitioners submits that the Petitioners have not pleaded in the Petition as regards the identification of their individual departments and no orders appointing them as HOD, are placed on record. He submits, on instructions, that since the Managing Directors have issued experience certificates, they may be considered as HODs.

11. The learned AGP submits on the basis of the pleadings and the documents before us, that these are fallacious cases wherein experience certificates are procured by such Petitioners, only for creating a picture that they are eligible. The issuing authorities have stated in the certificates that they are issued to enable the Petitioners to appear for the written examination for empanelment for the post of

Managing Directors.

12. We have perused Section 49 of the Factories Act, 1948, which provides for appointment of more than 1 Welfare Officer, if the factory has 500 or more workers ordinarily employed and the occupier has to appoint several Welfare Officers. We are surprised as to how the Petitioners have not placed their appointment orders on record. If they claim to have been appointed as HODs of particular departments, such designation cannot be on the basis of a certificates issued by the MDs, who have clearly recorded that the certificates are issued to enable the Petitioners to appear for the exams for the post of Managing Director.

13. There can be no debate that a lone person working as a Welfare Officer, cannot declare himself as an HOD, when a department does not exist at all. A department does not mean and include a stand alone person, without an order of designating his as the HOD.

14. The learned AGP submit that the State of Maharashtra, through it's Cooperation, Marketing and Textile Department, has issued a Government Resolution dated 13th March, 2020, vide which directives have been issued to implement the Indalkar Committee revised staffing pattern and the Labour Officer is not the HOD or

portfolio head in any department. These facts were not cited or set out, before the learned benches of this Court, in the two orders/cases referred to hereinabove.

15. The Indalkar Committee Recommendations have identified 5 specific departments on page No.57 pertaining to these sugar factories, who have a crushing of 2500 metric tonnes of sugarcane, per day. The 5 departments even indicate their HODs. A Legal Officer is mentioned at serial No.4 under the HOD. He is placed in the General Office Department, which is headed by the General Manager as HOD. There is an HR Department, which has 5 employees and the HR Manager. Even the HR section is the part of 'General Office'. The second department is the Engineering Department headed by the Works Manager or the Chief Engineer. The third department is the manufacturing department / production department. The fourth department is the accounts section with the Finance Manager or the Chief Accountant, as HOD. The last, fifth department is the Agricultural Manager / cane development and cane supply department. In all, there are 5 HODs identified for such departments.

16. In view of the above, though the Petitioners are working as Welfare Officers or Labour Officers or Secretary (Special Grade) or

Legal Officer, none of them have been able to point out as to the identification of their individual departments and the letter of appointment or designation, issued by the management of the sugar factory, to designate them as HOD of a particular sanctioned department. Merely because they claim to be Welfare Officers or Labour Officers on the basis of certificates issued by the M.Ds, stating that the experience certificates are issued only to enable them to appear for the exams, in our view, would not prove that these Petitioners are actually the HOD of a particular department. These factors are brought before us by the learned AGP.

17. Considering the above, we do not find that these Petitioners have succeeded in making out a case that they are appointed or designated as HOD of any particular department. This Petition is devoid of merits and is, therefore, dismissed.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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