

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12622 OF 2022

Shri Snehal S/o Baburao Kuwar,
Age: 47 years, Occu: Service,
R/o: C-8, Staff Quarter, KBC North
Maharashtra University, Umavi Nagar,
Jalgaon, District Jalgaon.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai – 32.
2. The Secretary, Finance Department,.
Mantralaya, Mumbai – 32.
3. The Joint Director,
Higher Education, Jalgaon Region,
Jalgaon.
4. Kavayitri Bahinbai Chaudhari,
North Maharashtra University,
Umavi Nagar, Jalgaon, District Jalgaon
Through its Registrar.

.. **Respondents**

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Mr. Lalitkumar S. Mahajan, Advocate for the Petitioner.
Mr. S.G. Sangle, AGP for the Respondent-State 1 to 3.
Mr. A.B. Girase, Advocate for the Respondent No.4

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**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**
DATE : 11th January, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner put-forth prayer clause-C as under:

“C) By way of appropriate Writ, order or direction in the like nature, the Hon’ble High Court may kindly direct the respondent authorities not to make applicable the Defined Contributory Pension Scheme (New Pension Scheme) to the service of petitioner, pursuance to the Government Resolution dated 31st October, 2005, as the appointment of the petitioner is prior to 31st October, 2005.”

3. The learned advocate for the petitioner submits on instructions that though he has challenged the Government resolution dated 31.10.2005, he would not press the said prayer and he desires that his claim be decided in the light of his appointment order and the placement granted to him.

4. Having considered the strenuous submissions of the learned advocates representing the respective sides, we find that the sequence of events need to be set out as under:

A) Respondent no.4-University published an advertisement dated 07.08.2004 in various newspapers for filling up various posts including the post of a Junior Assistant.

B) The petitioner applied in pursuance to the said advertisement. As a part of the selection process, he was directed to produce documents vide communication dated 12.08.2005.

C) On 17.10.2005 he was issued with an appointment order placing him on probation as a Junior Assistant and granting him time up to 17.11.2005 for reporting for duties.

D) A specific statement on oath has been made in the pleadings that the petitioner reached the University to tender a joining report dated 29.10.2005, addressed to the Registrar of the University.

E) Since the University was on Diwali Vacation, no authority was available to accept his joining report. Eventually, after the Diwali Vacation, his joining report was accepted on 08.11.2005 by mentioning his date of appointment as 17.10.2005.

5. The strenuous submissions of the learned advocate for the petitioner is that the recruitment process was initiated on 07.08.2004. The interview took place prior to the University calling upon him on 12.08.2005 to tender all necessary documents. His appointment order issued on 17.10.2005 is indicative of the fact that he was selected and appointed. It was not a case of mere selection, oblivious of whether an appointment order would be issued to him. The office order dated 08.11.2005, posting the petitioner in a particular department, also carries the reference to his appointment order dated 17.10.2005.

6. The learned AGP and the learned advocate representing the University, have vehemently opposed this petition. Their contention is that the petitioner actually joined duty on 08.11.2005. The Government resolution dated 31.10.2005 indicates that a person must be recruited in employment prior to 01.11.2005. Though the petitioner may have been selected and appointed vide appointment order dated 17.10.2005, his actual date of joining is material and, hence, it is apparent from the face of the record that the petitioner joined duties on 08.11.2005.

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 कर्मचाऱ्यासाठी, 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.

13. In the case in hand, the selection process commenced from 07.08.2004, when the advertisement was published and the process concluded with the issuance of the appointment order to the petitioner dated 17.10.2005. Notwithstanding as to whether the petitioner had actually reached the University on 29.10.2005 for reporting for duties, the fact remains that he was appointed vide the appointment order dated 17.10.2005 and vide Clause-13 of the order he was called upon to report for duties up to 17.11.2005, failing which his appointment order would stand cancelled. The learned advocate for the petitioner submits that he has also tendered his ‘Mavchi’ Scheduled Tribe

validity certificate dated 30.09.2005, issued by the competent committee which is prior to his appointment on 17.10.2005.

14. In view of the above, this petition is allowed. The Government resolution dated 31.10.2005 shall not be made applicable to the case of the petitioner and he would be entitled to the benefits of the old pension scheme.

15. Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]