

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12127 OF 2017

Ramdas Mohan Avhad

Age : 43 years, Post – Mahadeo Nagar,

Tisgaon, Tal : Pathardi,

Dist : Ahmednagar-414 106.

....Petitioner

Versus

1. State of Maharashtra
Through Secretary, Rural Development
Department, Mantralaya, Mumbai-32
2. Education Officer (Primary) and
Member Zilla Parishad, Pune
District Selection Committee
Zilla Parishad, Pune, Dist : Pune.
3. Chief Executive Officer
General Administration Department
Zilla Parishad, Pune, Dist. Pune.
4. Dy. Chief Executive Officer,
General Administration Department,
Zilla Parishad, Pune, Dist. Pune.
5. Dy. Education officer
Zilla Parishad Pune, Dist. Pune
6. Sudam Ramdas Valunj
Age : Adult, R/o. Survy No.80,
Behind Mahalaxmi Credit Society,
Samarth Nagar, Navi Sangvi, Pune-27.

....Respondents

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Mr. Rohit Pawaskar i/b. Mr. Sandeep R. Waghmare for the Petitioner.

Ms. R. A. Salunkhe, AGP for Respondent No.1 - State.

Mr. S. R. Ghanavat i/b. Mr. Pakaj Deokar for Respondent Nos. 2 to 5.

Mr. Saurabh Pakale a/w. Ms. Padmaja Malgaonkar i/b. Mr. S. M. Katkar for Respondent No.6.

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**CORAM: NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 9 JUNE 2023.

P.C.:

By this petition, petitioner challenges the selection process for effecting promotions to the post of Extension Officer (Education) Zilla Parishad, Pune in respect of Open-Project Affected Person category and questions the validity of promotion order dated 24 November 2016 made in favour of Respondent No.6. Petitioner seeks promotion as Extension Officer in place of Respondent No.6.

2. Facts, in a nutshell, are that petitioner has been working as Primary School Teacher in Zilla Parishad School, Ahmednagar. An advertisement was issued on 1 April 2010 inviting applications from eligible candidates for the post of Extension Officer (Education), Zilla Parishad, Pune. As per advertisement, there was reservation for Project Affected Persons (**PAP**). Both petitioner and Respondent No.6

participated in the selection process. Both of them belong to PAP category. After completing selection process consisting written test and interview, merit list was published, in which petitioner secured 146.75 marks whereas Respondent No.6 secured 142.12 marks. Petitioner's name was reflected in Open category whereas name of 6th Respondent was reflected in Open-PAP category. Petitioner contends that at the time of appearing for interview, he had specifically raised objection about reflection of his name in Open category vide letter dated 16 June 2010.

3. It appears that there was ban on recruitment, on account of which though the selection process was complete, appointment orders could not be issued. The ban on recruitment was relaxed in the year 2012 and thereafter the list of selected candidates was published on 14 February 2014. Respondent No.6 was shown to have been selected in Open-PAP category whereas petitioner's name did not figure in the list of selected candidates. He therefore made representations dated 15 February 2014, 27 March 2014 and 1 April 2014. In the meantime, some inquiries were conducted with regard to validity of PAP certificate of Respondent No.6. Petitioner claims that a decision was taken not to appoint Respondent No.6. However in pursuance of his selection, Respondent No.6 was appointed to the post of Extension Officer (Education) in Open-PAP category vide letter dated 28 February 2014. Petitioner went on making representations and Divisional Commissioner directed the Chief Executive Officer Zilla Parishad, Pune to grant hearing to all

concerned and take an appropriate decision. The hearing was conducted by the Chief Executive Officer assisted by few other officials on 24 October 2016. Petitioner's objection came to be rejected by the Chief Executive Officer vide letter dated 11 November 2016. Petitioner has challenged the order dated 24 November 2016 in the present petition, in which he has sought the following prayers:

- a. that this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ in the like nature calling for the record and proceedings pertaining to the selection process for the post of 'Extension Officer (Education) Zilla Parishad, Pune reserved for Open-Project Affected Person Category, pursuant to the Advertisement dated 1-4-2010 and after examining its legality, validity and propriety the Order dated 24-11-2016 passed by the CEO ZP, Pune be quashed and set aside.*
- b. that this Hon'ble Court be pleased to declare that, the appointment of 6th Respondent to the post of Extension Officer (Education) Zilla Parishad, Pune is illegal and the Petitioner be declared as the successful candidate for the Post of 'Extension Officer (Education) Zilla Parishad, Pune in place of 6th Respondent, alongwith all consequential service benefits including seniority.*
- c. Pending the hearing and final disposal of the present Writ Petition the 6th respondent be restrained from acting as 'Extension Officer (Education) Zilla Parishad, Pune.*
- d. Interim and ad interim reliefs in terms of prayer clause (c) above may kindly be granted.*
- e. Any other and further reliefs in favour of the Petition as this Hon'ble Court deems fit in the facts and circumstances of the present case."*

4. Appearing for petitioner, Mr. Pawaskar the learned counsel would submit that petitioner had applied in Open-PAP category and had

produced PAP certificate alongwith his application form. That he was initially considered in Open-PAP category by the Respondent-Zilla Parishad. That while preparing merit list, petitioner's name was erroneously included in Open category. This fact was brought to the notice of Respondent-Zilla Parishad by petitioner by addressing representation dated 15 June 2010. That petitioner has secured more marks than Respondent No.6 in Open-PAP category and that therefore he deserves to be appointed on the post of Extension Officer (Education) in place of Respondent No.6.

5. Mr. Ghanavat, the learned counsel appearing for Respondent Nos. 2 to 5 would oppose the petition submitting that petitioner belatedly raised objection to his non-selection. That he had applied from Open category though he supplied PAP certificate. The objection with regard to selection of Respondent No.6 was belatedly raised after 4 years. That petitioner participated in the interview in Open category without demur. He would pray for dismissal of the petition.

6. Mr. Pakalem the learned counsel appearing for Respondent No.6 would submit that the appointment order of Respondent is not under challenge in the present petition. That petitioner never objected to his case being considered in Open category. That petitioner's belated objection was without merit and has rightly been rejected by Respondent Zilla Parishad.

7. We have also heard Ms. Salunkhe, the learned AGP appearing for Respondent No.1.

8. Having heard the learned counsels for the parties and having perused the pleadings and documents on record, the short issue that arises for our consideration is whether petitioner has made out a case for appointment on the post reserved for Open-PAP category in place of Respondent No.6. It must be observed at the very outset that Respondent No.6 has been appointed as Extension officer (Education) vide order dated 28 February 2014. In the petition, originally filed on 12 April 2017, petitioner chose not to challenge the appointment order of Respondent No.6 dated 28 February 2014. Even after the same was brought on record by Respondent No.6 alongwith his affidavit dated 5 February 2019, petitioner has failed to amend the petition by setting up a challenge to the appointment order dated 28 February 2014. In absence of any challenge to the appointment order dated 28 February 2014, the legality thereof cannot be determined. This is the first reason why the petition must fail.

9. Even though the objection of absence of challenge to the appointment order dated 28 February 2014 was to be momentarily ignored, no relief can otherwise be granted to petitioner in the present petition. The advertisement in question was issued on 1 April 2010. Entire process of selection was completed in the year 2010. Issuance of appointment orders were delayed possibly on account of restrictions on

recruitment. The process (*qua* petitioner and Respondent No.6) was completed with issuance of appointment order in favour of Respondent No.6 on 28 February 2014. Instead of filing the present petition immediately after 28 February 2014 and instead of challenging the said order, petitioner kept perusing the matter with the respondent authorities for an unduly long time. The Committee headed by CEO-Zilla Parishad also raised the issue of not challenging petitioner's non-selection within reasonable time and his objection was accordingly rejected by order 24 November 2016 for sole reason of delay in raising objection.

10. We therefore do not find this is to be a fit case to disturb appointment of Respondent No.6 at such a belated stage in exercise of our equity jurisdiction. Respondent No.6 has been working on the post of Extension Officer (Education) since 28 February 2014. His appointment order is not challenged by petitioner. Petitioner did not challenge the action of Respondent Zilla Parishad in considering his candidature in Open category within reasonable time. Rather he took a calculated chance of getting selected in Open category. Even though petitioner did object to consideration of his candidature in Open category by submitting representation dated 15 June 2010, he failed to exercise his remedy in respect of his grievance immediately after the select list was published and in any case, after appointment order was issued in favour of Respondent No.6 on 28 February 2014. It is not that Petitioner's chances of promotion were permanently barred. What is

questioned in the present petition is the selection process of the year 2010, During past 13 long years, many selection processes must have been undertaken, wherein Petitioner could get selected and promoted. No interference is therefore warranted in the impugned action.

11. Thus, both for reasons of delay as well as on merits, no case is made out by petitioner for interference by this court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The Writ Petition is accordingly dismissed with no order as to costs.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE