

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

WRIT PETITION 1286 OF 2022

Waman Ismail Pawar
Aged about 53 yrs, Occ. Service,
R/o. At Post Shahapur, Pimpri Khurd,
Tahsil Akot, District Akola

.....PETITIONER

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

1. State of Maharashtra
through its Secretary Education Department,
Mantralaya, Mumbai 400 032

2. Deputy Director,
Vocational Education and Training,
Regional Office, Amravati

3. Shivaji Shikshan Sanstha,
Shivaji Nagar, Amravati,
through Secretary

4. Jijamata Mahavidyalaya,
Buldhana, through Principal

..RESPONDENTS

Mr. P.S. Chavan, counsel for petitioner.
Mr. N.S. Rao, AGP for respondents 1&2/State.
Mr. P.P. Mahalle, counsel for respondent 3.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 03.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally

with consent of the parties.

3. The petitioner is assailing the order dated 15.2.2022, rendered by respondent 2 – Deputy Director of Vocational Education and Training, whereby, approval to the appointment of the petitioner is rejected on the premise that the petitioner did not acquire the qualification of Typing English (40 words per minute) or Marathi (30 words per minute).

4. The petitioner belongs to the Scheduled Tribe. According to the petitioner, after clearing Higher Secondary School Certificate examination, he underwent training in computer and DTP and in May, 1992 cleared examination in English Typing in the category 30 words per minute and further completed the MS-CIT certificate course in the year 2021.

5. Petitioner contends that he was appointed as Junior Clerk with respondents 3 and 4, pursuant to the advertisement published, vide order dated 29.12.2003. Petitioner contends that his appointment was in clear vacancy which was reserved for the Scheduled Tribe.

6. It is not in dispute that vide order dated 26.4.2003, the appointment was approved by respondent 2. However, the approval appears to be adhoc inasmuch as the approval is made subject to the decision of the School Tribunal which was in seisin of appeal/s preferred by the terminated employee/s.

7. The petitioner was receiving only the basic pay in the absence of permanent approval. He pursued the matter with the Management, and since the action was not as expected, the petitioner preferred Writ Petition 6177/2019, in which, the High Court recorded the statement of the Management that an appropriate proposal shall be forwarded to the respondent 2. Accordingly, the Management appears to have forwarded the proposal, which is rejected by the order impugned.

8. Having heard the learned counsel Mr. P.S. Chawhan for the petitioner, the learned AGP Mr. N.S. Rao, for respondents 1&2 and the learned counsel Mr. P.P. Mahelle for respondent 3, we find that the petition shall have to be allowed, and we may briefly spell out the reasons.

9. One glaring aspect is that when the appointment was

approved vide order dated 29.12.2004, condition 8 refers to only MS-CIT certificate of training. The condition that the petitioner shall have cleared the English Typing 40 words per minute examination is not incorporated in the initial approval order. The other aspect of the matter is that according to the petitioner and the Management, the appointment is as Junior Clerk for which there is no requirement of possessing the English Typing 40 words per minute certificate. It appears, that the respondent 2 is treating the appointment as Junior Clerk-cum-Typist, and is insisting after the passage of nearly 20 years, for production of the certificates which are referred in the order impugned. We note from the appointment order, to which the approval is granted, that the appointment is as Junior Clerk. As a fact, even the initial approval order refers to the appointment as Junior Clerk and not Junior Clerk-cum-Typist.

10. We are not required to delve deeper in the submission of the learned counsel Mr. P.S.Chauhan that in any event, the petitioner possesses necessary qualification. We are also not required to consider the submission that the order impugned is rendered without hearing the petitioner. In the facts of the case, we find that the order impugned is patently illegal.

11. We hold and declare the petitioner entitled to approval as Junior Clerk from the date of initial appointment and to all consequential reliefs based on such declaration.

12. We quash and set aside the order impugned and allow the petition in terms of the declaration supra.

13. At this stage, the learned AGP Mr. N.S. Rao points out that the public exchequer cannot be burdened with the monetary claim for the entire period inasmuch as the fault lies at the doorstep of the Management which forwarded the proposal to respondent 2 only on 3.12.2021.

14. We, therefore, direct that the grants shall be released for the period 3.12.2021 and onwards and for the earlier period responsibility to pay the arrears shall be that of the Management.

15. The petition is disposed of accordingly.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

belkhede

Digitally Signed By:BELKHEDE
RAVINDRA SURESHRAO
P.A. to the Hon'ble Judge
Signing Date:12.04.2023 18:10