

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2502 OF 2018

Shankar S/o. Mahadev Bade,
Aged about 50 years, Occu:
Service (Driver), R/o. Khairi,
Taluka : Ralegaon, Dist.Yavatmal.

.... **PETITIONER.**

// VERSUS //

1. The State of Maharashtra,
Through its Secretary,
Village Rural Development
Department, Mantralaya,
Mumbai.
2. The Zilla Parishad, Yavatmal
through its Chief Executive
Officer.
3. The Divisional Commissioner,
Amravati Division, Amravati.
4. Panchayat Samiti, Zari Jamini
through its Block Development
Officer, Tq. Zari-Jamini, Dist.:
Yavatmal.

.... **RESPONDENTS.**

Shri Tejas Patil, Advocate for Petitioner.
Shri D.P.Thakre, A.G.P. for Respondent Nos.1 & 3.
Shri Nalin C. Majethia, Advocate for Respondent No.2 & 4.

CORAM : **ANIL S. KILOR, J.**
DATED : **FEBRUARY 08, 2023**

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The order dated 22/02/2018 passed by the Divisional Commissioner directing the Zilla Parishad to repatriate the petitioner to his original post of Peon or otherwise by considering his educational qualification, he be appointed on a suitable post in 10% quota, is under challenge in this writ petition.

The brief facts of the present case are as under:

4. The petitioner was appointed in the year 1991 on the post of Tractor Driver by Gram Panchayat, Khairi and in view of the Government Resolution dated 23/08/2005 he was directly recruited in Zilla Parishad on the post of driver, in 10% quota. The petitioner was appointed in Zilla Parishad on 09/01/2015 and he was asked to submit

documents as regards educational qualification to fulfill the minimum eligibility criteria i.e. 12th Standard. Accordingly, he submitted Certificate of Bhasharatna examination of Mumbai Hindi University, which is equivalent to 12th Standard as per the Government Resolution dated 14/06/1999 issued by Higher and Technical Education Department. However, on the ground that the said Government Resolution applies only to the Teachers and not to the Drivers, the services of the petitioner were terminated vide order dated 04/10/2012 (26/10/2016).

5. The petitioner, feeling aggrieved by the said order, carried an appeal before the Divisional Commissioner, who dismissed the appeal and directed the Zilla Parishad to repatriate the petitioner to his original post in Gram Panchayat or by considering his educational qualification appointing him in 10% quota on any suitable post in the Zilla Parishad.

6. The learned counsel for the petitioner submits that before the petitioner was appointed in 10% quota, vide Government Resolution dated 06/09/2012 the minimum qualification of 12th Standard for the post of Driver was modified and now 8th Standard is the minimum educational qualification for the post of Driver. He submits that,

admittedly, the petitioner is having higher educational qualification than 8th Standard and therefore, the termination of the petitioner on the ground that he does not possess 12th Standard qualification is illegal.

7. He further argues that even if it is considered that the minimum qualification is 12th Standard for the post of Driver in Zilla Parishad, still he complies with the same as he possesses equivalence of 12th Standard i.e. Certificate of Bhasharatna examination of Mumbai Hindi University. It is pointed out that as per the Government Resolution dated 14th June 1999 issued by Higher and Technical Education Department of the State of Maharashtra, the equivalence have been given to the said examination for the purpose of appointment as a Teacher. It is submitted that if the said examination has received equivalence for the post of Teacher, it will equally apply to any other post, including the post of Driver. It is, therefore, submitted that both the authorities have failed to consider the said fact.

8. The learned counsel for the Zilla Parishad supports the order of termination and submits that the Government Resolution dated 14/06/1999 speaks about the equivalence for the post of Teacher and not

the Driver and therefore, the said Government Resolution will not apply to the present case. It is further submitted that the Government Resolution dated 06/09/2012 will not apply to the direct recruitment but it will apply to the promotion and therefore, though now minimum educational qualification required for the post of Driver is 8th Standard, but it is not for direct recruitment but for the promotion only.

9. The learned A.G.P. points out that the Commissioner, after considering the qualification and the fact that the petitioner was appointed in 10% quota, has rightly directed the Zilla Parishad to repatriate the petitioner in Gram Panchayat on his original post or otherwise appoint him in 10% quota on the suitable post considering his educational qualification. It is submitted that the Commissioner has done complete justice by issuing above referred direction and therefore, no interference is required.

10. In the backdrop of the rival submissions of the parties, I have perused the petition, documents and the impugned orders.

11. Admittedly, the petitioner has passed Bhasharatna Examination of Mumbai Hindi University which has received equivalence as per the Government Resolution dated 14/06/1999 issued by Higher and Technical Education Department, State of Maharashtra. Once the Higher and Technical Education Department has granted equivalence to the Bhasharatna Examination of Mumbai Hindi University for appointment on the post of Teacher, I am of the opinion that it will equally apply to the lower post than the Teacher, including Driver.

12. Furthermore, the Government Resolution dated 06/09/2012 cannot be interpreted in a way that, it is applicable only for promotion considering the words “direct recruitment” used before the word “promotion”.

13. In the circumstances, I am of the opinion that the Chief Executive Officer has committed grave error in terminating the services of the petitioner and accordingly, I pass the following order:

- i) The Writ Petition is allowed.

- ii) The impugned order dated 26/10/2016 passed by the respondent-Chief Executive Officer and the impugned order dated 22/02/2018 passed by respondent-Divisional Commissioner, are hereby quashed and set aside.

Rule made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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