

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

WRIT PETITION 463 OF 2020

1. Baburao s/o. Somaji Bawane,
aged 45 yrs, Occ. Service,
r/o. Village Shioni, Post Yeoli,
Tahsil and District Gadchiroli,

2. Pochalu s/o. Lasmaiah Chinta,
Aged about 45 years, Occ. Service,
R/o. Post Asarali, Tahsil Sironcha,
District Gadchiroli

.....PETITIONERS

..V E R S U S..

1.State of Maharashtra
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai
through its Secretary,

2. Zilla Parishad, Gadchiroli,
Through its Chief Executive Officer,
Zilla Parishad, Gadchiroli

3. Chief Executive Officer,
Zilla Parishad, Gadchiroli,

4. Block Development Officer,
Zilla Parishad, Gadchiroli

5. Block Development Officer,
Sironcha,

6. Suresh s/o. Maroti Kamble,
At Post Illur, Tahsil Chamorshi,
District Gadchiroli

7. Sandip s/o. Yashwant Sayyam,
At Post chatgaon, Tahsil Dhanora,

District Gadchiroli

8. Pramod s/o. Dhanaji Karpate,
At post Chop, Tahsil Desaiganj,
District Gadchiroli

..RESPONDENTS

Mr. H.A. Deshpande, counsel for petitioners.
Mrs. K.R. Deshpande, AGP for respondent 1/State.
Mr. A.R. Fuley, counsel for respondents 2&3.
Mr. Sachin Zoting, counsel for respondents 6 & 8.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 30.03.2023

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

Heard.

2. Rule. Rule made returnable forthwith. With consent,
the petition is finally heard.

3. The petitioners are assailing the selection process of the
Zilla Parishad, Gadchiroli ("ZP") in respect of appointments of
panchayat servants on class III and class IV posts, for the
recruitment year 2018.

4. Inasmuch as the petitioners contends that their rightful
claim is ignored, and respondents 6,7 and 8 are appointed
superseding their better chain, the consequential relief is that the
appointment orders issued to respondents 6,7 and 8 be quashed.

5. Facts lie in a reasonably narrow compass.

6. Petitioner 1 was appointed as panchayat servant with effect from 17.8.1996 and he has completed more than 20 years of continuous full time service as on the date of institution of the petition. Petitioner 2 was appointed as panchayat servant with effect from 1.7.2000 and has completed more than 19 years of continuous full time service.

7. The petitioners refer to the Maharashtra Zilla Parishad District Service (Recruitment) Rules, 1967 as amended. Petitioners would submit that Rule 10-A provides that the panchayat servants, who have completed not less than 10 years of continuous full time service in the office of the village panchayat shall be eligible for appointment to the post of class III and class IV in district services. Such appointments shall be made by the concerned Chief Executive Officer (“CEO”) of the Zilla Parishad **directly on the basis of the seniority from amongst the panchayat servants** (emphasize supplied)

Sub-rule 2 starts with non-obstante clause and provides that whenever any class III and class IV posts in district services are to be filled by nomination, not less than 10 percent of the total

posts declared to be vacant in the cadre pertaining to the ZP shall be filled from amongst the panchayat servants.

In the context of the grievance of the petitioners, Sub-rule(3) may be noted. The said sub-rule prescribes the upper age limit for appointment from 10 percent quota as 45 years of age.

Rule 10-A further prescribes the qualifications. Inasmuch as there is no dispute that the petitioners do qualify, we need not dilate much on the qualifications prescribed. The relevance of the upper age limit shall depend on the finding as to the correctness or otherwise of the decision to ignore the claim of the petitioners.

8. The initial list of the panchayat servants is required to be prepared at the level of the Gram-Sevak or the Village Development Office (“VDO”) as the case may be. Sub-rule 2 contemplates that after the Gram Sevak or the VDO completes the prescribed formalities and forwards the copy of the form prescribed to the Block Development Officer (“BDO”), a combined seniority list in duplicate of all panchayat servants working in each village panchayat within his jurisdiction, shall be prepared by the BDO. The BDO is also entrusted with the responsibility of preparing a separate seniority list of eligible servants for class III

and class IV posts in district services.

9. In the context of the issue involved, Sub-rules (3) and (4) are relevant. It is provided that the CEO shall prepare a combined seniority list on the basis of the seniority list received from Block Development Officers in the district and shall forward copies of the combined list to the State Government, BDO, village panchayat concerned and the panchayat servant/s.

10. Having noticed the statutory provisions which come into play, we may note the factual matrix broadly.

11. The seniority list of the panchayat servants as on 1.1.2018 was published by the CEO on 14.9.2018 after considering the objections raised. Petitioners 1 and 2 are at serial numbers 40 and 134, respectively. The petitioners contend that they are shown eligible for recruitment/appointment on class III and class IV in district services.

Petitioners contend that out of available vacancies, as is mandated by the rules, 56 posts corresponding to 10 percent of the total vacancies were reserved for panchayat servants and appointment on compassionate basis. The petitioners aver that

out of 56 posts, 29 were to be filled from the panchayat servants. Proceedings were finalized on 12.12.2018 and the names of the eligible panchayat servants were shortlisted. On 4.12.2018, 29 panchayat servants including the petitioners were directed to remain present in the office of the ZP on 17.12.2018 for verification of documents. Petitioners accordingly remained present at the office on 17.12.2018 along with the documents which were checked and verified. Petitioners aver that as per the check list, the names of the petitioners find place at serial 1 and 7, respectively.

12. Coming to the aspect of the upper age limit, the petitioners point out that as on the date of the finalization of the seniority list as on 1.1.2018, the petitioners were well below the upper age limit of 45. Petitioners refer to and rely upon the Government Resolution dated 13.3.2018 which provides that age of the employee as on the 1st day of January of the subject year shall be the relevant age for determining whether the employee is over age. The date of birth of the petitioner 1 is 20.4.1973 and that of petitioner 2 is 5.4.1973, and as on 1.1.2018 neither of them had completed the age of 45.

13. Petitioners asserts that for reasons which are not justified, the recruitment process for the year 2018, and which process was virtually complete, was not taken to the logical end and instead appointments/recruitment were made on the basis of the seniority list as on 1.1.2019. Petitioners assert that since the recruitment process for the year 2018 was illegally given a go-by, and a recruitment was effected on the basis of the seniority list of the employees as on 1.1.2019, the petitioners were excluded from the zone of consideration on the premise of having crossed the upper age limit of 45 years. We have broadly stated the case of the petitioners.

14. We may now note the response of the ZP. ZP and its CEO filed affidavit in response dated 24.11.2020. The affidavit in response is laconic. All that is stated in the affidavit is that in view of the upper age limit of 45 years, the petitioners have not been considered for appointment. The only other aspect emphasized, is that the approval to the appointments in the 20 categories (incorrectly referred to as 20 posts) on 31.12.2018 and accordingly, the seniority as on 1.1.2019 was considered, which ruled out the petitioners who by then had crossed the upper age limit of 45 years.

15. Petitioners have filed an additional affidavit dated 15.3.2021 making elaborate reference to the statutory rules. The petitioners assert in the additional affidavit that the recruitment process has to be conducted in every recruitment year, on the basis of the seniority as on the 1st day of January of the subject year. Petitioners further contend that by communication dated 18.2.2021, the State Government directed all Zilla Parishads to fill in the vacancies for the year 2019 on the basis of the seniority list as on 1.1.2019. Petitioners emphasize that the Zilla Parishad Gadchiroli however, filled in vacancies for the year 2018 on the basis of the seniority list as on 1.1.2019.

16. Respondents 2 and 3 have filed additional affidavit dated 17.1.2023, which broadly reiterates the contentions incorporated in the initial affidavit and proceeds to emphasize that there is no compulsion that the recruitment must be done every year. The additional affidavit contends that actual vacancies and vacancies to be declared are different concepts. While there may have occurred an actual vacancy, the vacancy is declared only when direct recruitment is made in accordance with Rule 10-A, is the submission in the additional affidavit.

17. We have also considered the affidavit in response filed on behalf of the respondents 6 and 8. The focus in the affidavit is on the aspect of the other appointees not having been impleaded. On the merits of the matter, the appointees submit that inasmuch as “there was no circular issued” in the year 2018, there were no vacant posts. The appointees contend that the recruitment effected on the basis of the seniority list as on 1.1.2019 does not suffer from any infirmity and the petitioners having crossed the upper age limit, are rightly excluded from the zone of consideration.

18. Having heard learned counsel Mr. H.A. Deshpande for the petitioners, learned AGP Mrs. K.R. Deshpande for respondent 1/State, learned counsel Mr. A. R Fuley for respondent 2 and learned counsel Mr. Sachin Zoting for respondents 6 and 8, we are of the considered view that the petition shall have to be allowed.

19. We have given due consideration to the statutory rules. Mr. H.A. Deshpande is right in emphasizing on the plain language of Rules 10-A and 10-B, and in the submission that the quota of 10 percent of the total vacancies available is required to be filled in strictly as per the seniority of the qualified/eligible panchayat

servants and there is no element of discretion as such.

The learned counsel for the respondents have not joined issues with the submission that a recruitment process was as a fact, initiated to fill in vacancies which were available in the year 2018, that the seniority list as on 1.1.2018 was the basis of the recruitment, that the petitioners were as a fact, eligible, qualified and senior and would have ordinarily had smooth entry in the list of the selected candidate, but for the fact that of the reasons which are quite blurred, 2018 recruitment process was abandoned. We note, that there is no rebuttal on behalf of the respondents to the averment in the petition that the petitioners were found eligible in principle, that the petitioners along with the others were summoned at the office of the Zilla Parishad for verification of documents and the verification was as a fact done.

20. We have noted the stand of the ZP in the initial affidavit, and the subsequent additional affidavit. In both the affidavits, there is absolutely no whisper as to the compelling reasons which necessitated filling up vacancies available in 2018, and as a fact, going ahead with the recruitment process of 2018, with the modification of 1.1.2019 as the relevant date for the

purpose of determination of seniority and age limit. It was expected from the ZP to explain why the recruitment process of the year 2018 was proceeded with on the basis of the seniority list as on 1.1.2019.

21. By our observation that the reasons for not going ahead with 2018 recruitment process on the basis of the seniority as on 1.1.2018 are blurred, we intend to convey, that it is only from the documents placed on record by the petitioners that we get some sense of situation. The petitioners have placed on record the proceedings which includes a note submitted by the officers of the ZP to the CEO. Note 2 (which is handwritten) suggests that petitioners whose names appear at serial 40 and 134 in the seniority list as on 1.1.2018, are age barred having crossed 45 years. This note is prepared on 11.2.2019. It appears that the seniority list as on 1.1.2019 was then published on 7.3.2019, and the names of the petitioners were excluded, having completed 45 years by then.

22. The next relevant development which is discernible from the material placed on record by the petitioners is the note sheet which was forwarded for the approval of the CEO in May,

2019. Interestingly, reference 1 of the note sheet is the seniority list as on 1.1.2018 which was published on 14.9.2018 and reference 2 is to the seniority list as on 1.1.2019. The note sheet refer to the directives issued by the CEO that instead of effecting the recruitment from 2018 list, the recruitment be made on the basis of 2019 seniority list.

We do not have the benefit of perusing the directives which may have been issued by the CEO, inasmuch as nothing is placed on record by respondents 2 and 3.

23. Blurred as the facts are, it would be safe to proceed on the assumption, that the CEO laboured under the impression that in view of the certain objections, and that the recruitment process initiated for the year 2018 is being finalized in the year 2019, it would be appropriate if the seniority list as on 1.1.2019 be considered as the eligibility basis.

24. While the CEO may have nurtured the *bona fide* belief that the appropriate course is to effect the recruitment on the basis of the seniority list as on 1.1.2019, we are not inclined to align with such view. It is not in dispute that vacancies were available, and contrary to the assertion in the affidavit, as a fact, were

declared in 2018, and which is why out of the total 56 vacancies corresponding to 10 percent were ear marked for the panchayat servants and compassionate appointments, and out of said 56 vacancies, to be precise 29 vacancies were to be filled in from the panchayat servants. Every recruitment process is bound to face certain objections either to the seniority list or any other procedural aspect. The fact that the recruitment process initiated in the year 2018 was taken to the logical end in 2019 is no justification for considering the seniority as on 1.1.2019 as the eligibility basis. The candidates like the petitioners, who were eligible in term of age limit as on 1.1.2018, are ousted from the process for no fault of theirs since as on 1.1.2019, the upper age limit is crossed.

25. It is not that the 2018 process was totally abandoned and fresh process initiated. The material on record would suggest, that as a fact, it is the 2018 recruitment process which was carried forward with the only change that the select list was tweaked on the premise that certain candidates turned 45 years on 1.1.2019 and therefore, would have to be excluded from the zone of consideration. It is difficult to put our imprimatur on such view.

26. We are more than satisfied that considering the statutory regime, the fact that the vacancies were declared and recruitment process initiated and the petitioners were included in the select list of 29 candidates, the petitioners could not have been excluded from zone of consideration on the premise that as on 1.1.2019, the petitioners have crossed the upper age limit.

27. We, therefore, hold and declare that the petitioners are entitled to the appointments as per their qualifications, and placement in the seniority list as on 1.1.2018 against 29 vacancies reserved for the panchayat servants. While the notional fixation shall be made from the date on which appointment orders are issued to the other candidates, the petitioners shall not be entitled to any financial benefit other than the fixation of the pay scales on the basis of the notional appointment/deemed date of appointment.

28. We are left with the appointments of respondents 6 and 8, who are undoubtedly junior to the petitioners in the seniority list as on 1.1.2018.

29. We direct that the appointments of respondents 6 and 8

shall be considered on the basis of their seniority in the seniority list as on 1.1.2018. However, no recovery shall be ordered if it is found that the dates of appointments of respondents 6 and 8 shall have to be re-fixed/revisited.

30. We expect the Zilla Parishad to issue the appointment orders to the petitioners within three weeks from the date copy of the judgment is uploaded.

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

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