

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

WRIT PETITION NO. 1570 of 2017

1. Dinesh s/o Ambadas Meshram,
Age 34 years, Occ.-Nil.
R/o. Ambika Nagar, Yavatmal.
2. Sunil s/o Sukhdeorao Gajghate,
Aged about 38 years, Occ.-Nil,
R/o. Dr.Ambedkar Nagar,
Yavatmal.

..... **PETITIONERS**

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

1. State of Maharashtra,
Through its Secretary,
Ministry of Rural Development,
Mantralaya, Mumbai-32.
2. Selection Committee,
Zilha Parishad, through its
Chief Executive Officer,
Yavatmal, District Yavatmal.
3. Shubham s/o Dadaji Gorghate,
Age 30 years, Occ.-Service,
R/o.C/o. Panchayat Samiti,
Babhulgaon, Yavatmal.
4. Vinod Mahadeorao Ganvir,
Age 27 years, Occ.-Service,
R/o C/o Zilla Parishad Office,
Construction Department,
Yavatmal.

..... **RESPONDENTS**

Shri C.V.Jagdale, Advocate for petitioners.

Shri S.M.Ghodeswar, Assistant Government Pleader for respondent no. 1.

Shri R.D.Bhuibhar, Advocate for respondent no. 2.

Shri J.B.Kasat, Advocate for respondent nos. 3 and 4.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
ARGUMENTS WERE HEARD ON : 06/01/2023
JUDGMENT IS PRONOUNCED ON : 17/03/2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioners are aggrieved by the selection and appointment of the respondent nos. 3 and 4 on the post of Civil Engineering Assistant (Construction) as made by Zilla Parishad, Yavatmal. It is their case that on 25.08.2014 an advertisement was issued by the Zilla Parishad proposing to fill up various posts including the post of Civil Engineering Assistant (Construction). A Selection Committee constituted by the Zilla Parishad prescribed the educational qualifications of S.S.C. alongwith one year Course of Construction Supervisor or Civil Draftsman or any equivalent course. In the written examination conducted by the Selection Committee, the petitioner no.1 secured 134 marks while the petitioner no.2 secured 136 marks. The respondent no.3 secured 136 marks while the respondent no.4 secured 138 marks. The respondent nos. 3 and 4 however had the educational qualification of Bachelor of Engineering (Civil). While, the respondent no.4 came to be appointed the respondent no.3 was placed at serial number one in the waiting list. According to the petitioners, since the advertisement required possessing of qualification of one year Course in

Construction Supervisor/Civil Draftsman and the respondent nos. 3 and 4 did not possess the same, but on the contrary were graduates in Engineering, they were not eligible to be considered for selection and appointment. The petitioners made a representation in that regard on 17.12.2016 and as there was no response to the same, this writ petition was filed on 23.12.2016.

3. Shri C.V.Jagdale, learned counsel for the petitioners submitted that the selection and appointment of the respondent nos. 3 and 4 was not in accordance with the advertisement dated 25.08.2014. Since the educational qualifications prescribed in the advertisement required completion of one year Course of Construction Supervisor or Civil Draftsman which the respondent nos. 3 and 4 did not possess, their candidature ought not to have been considered by the Zilla Parishad. The advertisement did not mention consideration of the candidature of those candidates who had acquired higher qualifications. Despite the petitioners' representation, this aspect was not considered by the Zilla Parishad. The learned counsel referred to the decision of this Court in ***Writ Petition No. 1483 of 2015*** (*Prashant B. Moon and anr. vs. The State of Maharashtra and others*) that was preferred against similar action taken by Zilla Parishad, Wardha. By the judgment dated 25.10.2016 the Division Bench held that when the minimum required qualification was not possessed by the candidates, the Zilla Parishad could not have permitted such candidates to participate in the selection process. As a result, ineligible candidates participated in the selection process and their names were

then included in the select list. On this count, this Court set aside the selection list published by the Zilla Parishad and it was directed to prepare a fresh select list by including the names of such candidates who possessed the minimum required qualifications as per the advertisement. It was submitted that this judgment was challenged before the Hon'ble Supreme Court by one of the respondents and the Special Leave Petition was dismissed on 12.08.2022. On this count, it was submitted that the selection of the respondent nos. 3 and 4 be set aside and the petitioners be appointed on the post of Civil Engineering Assistant (Construction).

4. Shri R.D.Bhuibhar, learned counsel appearing for the respondent no.2-Zilla Parishad opposed the aforesaid submissions. At the outset, he submitted that the petitioners had approached the Court belatedly by urging that the advertisement was issued on 25.08.2014 and the selection process had been undertaken in 2015. The posts in question were filled in 2015 and the respondent nos. 3 and 4 had joined their respective posts. The present writ petition had been filed on 23.12.2016 without indicating the reason for raising the belated challenge. It was then submitted that the aspect of delay in service matters was required to be considered in the light of the law laid down by the Hon'ble Supreme Court in *Union of India and others vs. N. Murugesan and others (2022) 2 SCC 25*. The learned counsel also referred to the Circular dated 03.12.2015 issued by the Rural Development Department of the State Government by which the candidates with higher qualifications were entitled to participate in the selection process.

5. Shri J.B.Kasat, learned counsel appearing for the respondent nos.3 and 4 also opposed the writ petition. He submitted that the respondent no.3 pursuant to his selection joined the post of Civil Engineering Assistant (Construction) on 20.06.2016 while the respondent no.4 had joined the said post on 24.09.2015. The said respondents having joined their posts, no relief could be granted to the petitioners especially when the writ petition was belatedly filed. Further, the petitioners were aware of educational qualifications of the respondent nos. 3 and 4. Despite that, they participated in the further selection process without any protest. The petitioner no.2 herein had also filed Writ Petition No.6862 of 2014 raising a challenge to the evaluation of the answer sheets during the course of recruitment. The said writ petition was dismissed by this Court on 23.12.2014 as this Court observed that it would not be proper for the High Court to exercise writ jurisdiction for deciding what was the correct answer to the questions in the written examination. The Special Leave Petition preferred by the petitioner no.2 was dismissed on 04.07.2016. The learned counsel also referred to the Circular dated 03.12.2015 by which the candidates possessing higher qualification than those advertised were permitted to participate in the selection process. To substantiate his contention the learned counsel placed reliance on the decisions in *U. P. Jal Nigam and another vs. Jaswant Singh and another (2006) 11 SCC 464* and *State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others (2015) 1 SCC 347*. It was thus submitted that the petitioners were not entitled to any relief whatsoever and the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties and we have perused the documents placed on record. It is not in dispute that in the advertisement dated 25.08.2014 insofar as recruitment to the post of Civil Engineering Assistant (Construction) is concerned, the minimum qualifications prescribed were S.S.C. with one year Course in Construction Supervisor or Civil Draftsman. The advertisement does not refer to any higher qualification such as a Degree in Engineering being prescribed. It is further not in dispute that while the petitioners possess the minimum qualifications prescribed, the respondent nos.3 and 4 who have since been appointed on the post of Civil Engineering Assistant (Construction) do not possess the aforesaid minimum qualifications but they possess higher qualification being a Degree in Engineering. In *Prashant Bhagwan Moon and another* (supra) this Court had considered a similar contention raised that the candidates having higher qualification but not minimum qualifications prescribed could be treated as eligible to participate in the process of recruitment. In the select list that had been prepared names of various degree holders were shown as qualified candidates without considering as to whether they possessed minimum qualification of certificate course as prescribed. The Circular dated 03.12.2005 though referred to as a Government Resolution was also considered and it was held that the same would be applicable to the advertisement published after issuance of said Circular dated 03.12.2005. It is on this basis that the petitioners claim relief in the present proceedings for challenging the selection/appointment of the respondent nos. 3 and 4.

7. On behalf of the respondents, it has been emphasized that notwithstanding the fact that the respondent nos. 3 and 4 do not possess the minimum qualifications, the petitioners are not entitled to any relief for the reason that they have approached this Court belatedly. The defence of delay and laches on the part of the petitioners has been raised. It would therefore be necessary to consider the claim of the petitioners in that context. The advertisement in question is dated 25.08.2014 and thereafter on 09.11.2014 candidates were required to answer the written examination. The petitioner no.2 herein had on 10.12.2014 approached this Court by filing Writ Petition No.6862 of 2014 seeking consideration of the representations made by him for correcting the answer sheets and thereafter publishing a proper merit list. On 23.12.2014 the aforesaid writ petition came to be dismissed by observing that it would not be proper for the Court to exercise writ jurisdiction for deciding what would be the correct answer to the questions in the examination paper. The petitioner's prayer was considered in the context of the marks assigned to the respondent no.4 herein by urging that he had been awarded extra marks. It is not the case of the petitioner no.2 that even at that stage when the earlier writ petition was decided, the petitioner no.2 was not aware about the educational qualifications of the respondent nos. 2 and 3. The verification of documents of those candidates who had passed in the written examination was undertaken on 17.07.2015. The record indicates that the petitioner no.2 had made various applications dated 26.07.2016, 28.07.2016 and 02.08.2016 in the matter of preparation of the select list and waiting list. The

Executive Engineer, Zilla Parishad, Yavatmal informed the petitioner no.2 on 05.08.2016 that the merit list as well as select list had been prepared in accordance with the placement of the candidates on merit. Though the respondent no.3 and the petitioner no.2 secured 136 marks each alongwith two other candidates, they were placed in the merit list after considering their educational qualifications, physical fitness, age and other relevant criteria. The document dated 05.08.2016 clearly indicates the educational qualifications of all the candidates in the select list as well as the waiting list. It appears that even thereafter the present petitioners did not take any immediate step to challenge the inclusion of respondent nos. 3 and 4 in the select list/waiting list on the ground that they possessed higher qualifications than the prescribed.

8. It can further be seen that this Court decided the writ petition preferred by *Prashant Bhagwan Moon and another* (supra) on 25.10.2016 where such recruitment was undertaken by Zilla Parishad, Wardha. Thereafter on 17.12.2016 the petitioner no.2 made a representation to the Chief Executive Officer, Zilla Parishad, Yavatmal and shortly thereafter on 23.12.2016 this writ petition came to be filed. When averments in the present writ petition are perused, there is no averment indicating the date when the petitioners' got knowledge of the fact that the respondent nos. 3 and 4 were possessing higher qualification than what was prescribed. The date when the petitioners got this relevant information would be material since the petitioners have challenged the appointment of the respondent

nos. 3 and 4 who pursuant to their appointment started discharging duties on the post of Civil Engineering Assistant. In *U.P.Jal Nigam and another* (supra), the Hon'ble Supreme Court has held that the aspect of delay and laches is an important factor to be considered in exercise of discretionary relief under Article 226 of the Constitution of India. If a party has acquiesced in the matter and has not been vigilant in pursuing the remedies available, said aspect would be relevant in exercise of such discretion. In a recent decision in *N. Murugesan and others* (supra) the aspects of delay, laches and acquiescence have been explained. We may also refer to the following observations in paragraph 14 of the decision of the Hon'ble Supreme Court in *State of Maharashtra vs. Digambar [(1995) 4 SCC 683]* :

“14..... in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot be get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blameworthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.”

9. When the facts of the present case are considered in the light of the law laid down in the aforesaid decisions, it becomes clear that the petitioners have failed to specifically plead as to when they got knowledge of the fact that the candidates with higher qualification were being considered for appointment disregarding the aspect of minimum qualifications. The said fact would be relevant in the light of the relief sought by the petitioners in their challenge to the selection and appointment of the respondent nos. 3 and 4. It is also found that the communication dated 05.08.2016 issued to the petitioner no.2 mentions the educational qualifications of the respondent nos. 3 and 4. Without taking any immediate steps, it appears that only after the decision of this Court in *Prashant Bhagwan Moon and another* (supra), the petitioner no.2 preferred a representation on 17.12.2016 after which this writ petition was filed on 23.12.2016. We also note that hearing of this writ petition was deferred in the light of the fact that the decision of this Court in *Prashant Bhagwan Moon and another* (supra) had been challenged by one of the respondents therein before the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No. 24245 of 2017. The said Special Leave Petition came to be dismissed on 12.08.2022 after which this writ petition was taken up for consideration. In the meanwhile, the respondent nos. 3 and 4 came to be promoted on the post of 'Junior Engineer' on 31.10.2022. It is true that the time taken for considering the writ petition cannot be attributed to the parties since this Court was awaiting the adjudication of the Special Leave Petition that was filed

challenging the decision in *Prashant Bhagwan Moon and another* (supra). The fact remains that the respondent nos. 3 and 4 now stand promoted to next post.

10. We also note that the learned counsel for the respondents urged that by Circular dated 03.02.2015 the State Government had clarified the issue with regard to consideration of higher qualifications than those prescribed as minimum qualifications in the advertisement. After referring to the Government Resolution dated 26.02.2010 it was clarified that the applications submitted by the candidates possessing higher qualifications could be accepted. In the earlier decision, this Court has held the aforesaid Circular to be a Government Resolution and has observed that it would be prospective in nature. *Prima facie*, the aforesaid Circular when read in the light of paragraphs 33 to 35 of the decision of the Hon'ble Supreme Court in *Puneet Sharma and others Vs. Himachal Pradesh State Electricity Board Limited and others* [**AIR 2021 SC 2221**] the same appears to be clarificatory in nature as it seeks to clarify the earlier Government Resolution dated 26.02.2010. If the same is treated as clarificatory, it would have to be given a retrospective effect from the date of the Government Resolution dated 26.02.2010. Be that as it may, we do not find it necessary to rest our decision on the Government Circular dated 03.12.2015 since we have found that the petitioners are guilty of unexplained delay and laches in preferring the present writ petition and seeking the aforesaid reliefs.

11. For aforesaid reasons, we are not inclined to interfere with the selection and appointment of the respondent nos. 3 and 4 on the ground that they possess a higher qualification than what was prescribed in the advertisement. The writ petition is thus dismissed. Rule stands discharged with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..