



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8040 OF 2021

- 1) Lalu s/o Balaji Kanguwar,
Age-35 years, Occu:Service as Peon,
R/o-Shardanagar, Sagroli,
Taluka-Biloli, District-Nanded,
- 2) Nagesh s/o Kamlakar Paware,
Age-Major, Occu:Service as Peon,
R/o-Sharadnagar, Sagroli,
Taluka-Biloli, District-Nanded,
- 3) Sanjay s/o Nagappa Kotnod,
Age-Major, Occu:Service as Peon,
R/o-Sharadnagar, Sagroli,
Taluka-Biloli, District-Nanded.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) Deputy Director of Education,
Latur Region, Latur,
- 3) The Education Officer (Secondary),
Zilla Parishad, Nanded,
- 4) Sanskruti Samvardhan Mandal,
Shardanagar, Sangroli, Taluka-Biloli,
District-Nanded, Through its Secretary,

5) Shri. Chhatrapati Shivaji High School
& Junior College, Shardanagar,
Sagroli, Taluka-Biloli,
District-Nanded,
Through its Head Master.

...RESPONDENTS

...

Mr. V.S. Panpatte Advocate for Petitioners.

Respondent No.1 served.

Mr. S.K. Shirse, A.G.P. for Respondent Nos. 2 and 3.

Mr. S.S. Deshmukh Advocate h/f. Mr. B.P. Gonare
Advocate for Respondent Nos. 4 and 5.

...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE OF RESERVING JUDGMENT : 4th MARCH 2024

DATE OF PRONOUNCING JUDGMENT : 20th MARCH 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. The petitioners are challenging the orders dated 18th January 2021 passed by respondent No.3 rejecting grant of approval to their appointments as Peon in respondent No.5 institution and then refusing to grant regular pay-scale to them.

3. The petitioners have contended that on account of retirement of one peon, by name Shri Uskelwar Malkoji Pochyabhai on 31st December 2011, further on retirement of one Gangadhar Sambhaji Shinde on 31st October 2012 and then on retirement of one Gangaram Deorao Shinde on 31st January 2015, the posts of peon had become vacant. Therefore, respondent Nos. 4 and 5, by making applications from time to time, sought permission from respondent No.3 to fill up the vacant posts by adopting the proper procedure. Respondent No.3 had neither responded nor considered those applications by respondent Nos. 4 and 5. Thereafter respondent Nos. 4 and 5 proceeded to issue advertisement in the respective years after the respective posts had become vacant and then appointed the present petitioners, respectively. Thus, the appointments of the petitioners were made in clear and vacant posts. Thereafter respondent Nos. 4 and 5 had submitted the proposals for grant of approval to respondent No.3. Even the reminders were issued, however, by impugned orders dated 18th January 2021, those proposals have been rejected on the ground that there is staffing pattern approved in respect of non-teaching staff and therefore, approval cannot be so granted. Hence, the present Petition.

4. Respondent Nos. 4 and 5 i.e. the management and the Head Master, gave affidavit-in-reply through Sambhaji Pundlik Gaikwad, the Head Master, wherein they are supporting the petitioners and along with the affidavit-in-reply, documents have been also produced to support the contentions.

5. On behalf of respondent No.3, one Baliram Irranna Yerpulwar, the Superintendent, Class-II has filed the affidavit-in-reply, wherein it is stated that though the petitioners are stated to be appointed since 2012 and 2015, respectively, yet their proposal has been submitted belatedly on 28th December 2020 i.e. after the lapse of eight years period. As per the Government Resolution dated 11th December 2020 in spite of allowing staffing pattern for the non-teaching staff, the allowance for class-IV employees is made applicable to the private aided school, partially aided school, aided secondary and higher secondary school. As per that, it is permitted to give honorarium to the class-IV posts instead of making regular appointment and therefore, approval cannot be granted.

6. Heard learned Advocate Mr. Panpatte for the petitioners, learned AGP Mr. Shirse for respondent Nos.2 and 3 and learned

Advocate Mr. Deshmukh holding for learned Advocate Mr. Gonare for Respondent Nos. 4 and 5. Perused the documents.

7. Learned Advocate for the petitioners is relying on the decision in ***Padmin Sonerao Hande vs. the State of Maharashtra and others*** (Writ Petition No.5241 of 2021, decided by the Division Bench of this Court on 11th March 2022), wherein the subsequent Government Resolution was held to be inadmissible to be applied to the earlier appointments. Learned Advocate also relies on the decision in ***Dilip Baburao Patil vs. State of Maharashtra and others*** (Writ Petition No.3175 of 2020, decided by the Division Bench of this Court on 30th July 2021), wherein it has been held that the Government Resolution dated 12th February 2015 cannot be considered for the general ban imposed on the recruitment. Further, the learned Advocate for the petitioners relied on the Single Bench decision of this Court in ***Elizabeth Benjamin Joseph and another vs. the State of Maharashtra and another*** (Writ Petition No. 239 of 2020, decided on 11th December 2020), wherein also it is said that the Government Resolution dated 12th February 2015 is not applicable to the appointments made prior to that date.

8. Perusal of all the documents which have been produced by the petitioners as well as respondent Nos. 4 and 5 would clearly show that one Uskelwar Malkaji Pochyabhai was about to retire on 31st December 2011 and therefore by communication dated 23rd November 2011, respondent Nos.4 and 5 sought permission from respondent No.3 to fill up the said vacancy. Said Uskelwar was a peon working with respondent No.5. Along with the said application, the staffing pattern / *Sanch Manyata* was also attached. Thereafter one Shinde Gangadhar Sambhaji, peon was about to retire on 31st October 2012 and therefore, by communication dated 13th September 2012, permission was sought from respondent No.3 – Education Officer to fill up the vacancy by giving an advertisement. Further another peon, namely, Shinde Gangaram Devrao was about to retire on 31st May 2015 and therefore, by communication dated 15th April 2015 permission was sought to fill up the vacancy by giving an advertisement. All these three communications were received to respondent No.3 and the acknowledgments of the same are appearing on these communications. Along with these communications, the copy of the staffing pattern of the respective year was attached i.e. "*Bindu Namawali*" and also the seniority-list. It appears that there was no response from

respondent No.3. In spite of specific averments in the Petition and production of the documents, there is no mention about it or explanation regarding the same in the affidavit filed on behalf of respondent No.3. This Court in ***Gopal Siddheshwar Akhade and others vs. State of Maharashtra and others, [MANU/MH/2590/201]***, and in ***Tukaram s/o Bharat Dudile and another vs. the State of Maharashtra and others*** (Writ Petition No.3098 of 2017, decided on 31st January 2024), held that when the respondent authorities had not responded to the communication made by the management regarding the information of the posts becoming vacant and then proceeding ahead with the advertisement and appointing persons on those vacant posts, then such appointments will have to be held as made as per the procedure. Thus, we find that the appointment of the petitioners were as against vacant posts.

9. Perusal of the impugned orders would show that the proposals are rejected only on the ground that there is staffing pattern fixed by the Government for non-teaching staff. This indicates that when respondent No.3 had scrutinized the proposals, he had not found that the appointment of the present petitioners was not as per the procedure. In fact, when that

staffing pattern came to be approved for the non-teaching staff, is not clarified in the impugned orders. If it was in existence on the date the permissions were sought to fill up the posts, respondent No.3 ought to have responded to the same. Respondent Nos. 4 and 5 were demonstrating to respondent No.3 that the appointments would be as against the vacant posts and the communications were along with the "*Bindu Namawali*", then any staffing pattern, which has come subsequently in existence, cannot be the ground for rejection of the proposals.

10. In the impugned orders, there is no reference to the Government Resolution dated 11th December 2020, in specific. Even if for the sake of arguments we take that respondent No.3 wanted to indicate the said Government Resolution to be applicable and therefore, he is rejecting the proposals, yet respondent No.3 failed to consider that all the three appointments of the present petitioners were prior to the coming into force the said Government Resolution dated 11th December 2020. Sending proposals for approval after the date of the Government Resolution i.e. even after eight years, will not support the rejection of the proposals. No doubt, there is delay in sending the proposals, but it was certainly within the powers

of respondent No.3 to call an explanation from respondent Nos. 4 and 5 regarding the delay. Straightway rejecting the proposals without calling upon the explanation is unjustified.

11. Further, when respondent No.3 had received the applications seeking permission to issue advertisement, then without explaining those documents, especially the acknowledgment of those applications in the affidavit-in-reply; respondent No.3 was not justified in taking a ground in the affidavit-in-reply that the proposals are filed belatedly. The affidavit-in-reply would not have been stretched to dug out fresh reasons, which were not part of the impugned orders.

12. Under the said circumstance, the Petition deserves to be allowed. Hence the following order:-

ORDER

(I) The Writ Petition stands allowed in terms of prayer clauses "B" and "C" to the Writ Petition.

(II) The release of the salary of the respective petitioners as Peon, as per their entitlement and thereafter on regular pay-

scale, as stated in prayer clause "C" to the Petition, should be in phased manner, to be divided between two equal installments of having duration of six months and the first installment would be due on 15th April 2024.

(III) Rule is made absolute in the above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR24