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WP 12994.19R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12994 OF 2019

Khanderao s/o. Kisanrao Karmukale
Age 48 years, Occ. Service,
R/o. Selu, Tq. Ausa,
Dist. Latur.

.. Petitioner

VERSUS

- 1] The State of Maharashtra
through its Secretary,
in the Department Education,
Mantralaya, Mumbai-32.
- 2] The Deputy Director of Education,
Latur Region, Latur,
Tq. And Dist. Latur.
- 3] The Education Officer (Secondary)
Zilla Parishad, Latur,
Tq. And Dist. Latur.
- 4] Shri Ganesh Shikshan Prasarak Manda,
Selu, Tq. Ausa, Dist. Latur,
Through its President,
Shri Bapurao s/o. Dhondiram Singapure,
Age 70 years, Occ. Agril.
R/o. Selu, Tq. Ausa, Dist. Latur.
- 5] The Headmaster,
Shri Ganesh Vidyalaya, Selu,
Tq. Ausa, Dist. Latur.

.. Respondents.

Mr. A.N. Irpatgire, Advocate for petitioner,
Mr. V.M. Jaware, AGP for respondent Nos. 1 to 3
Mr. V.M. maney, Adv. For respondent Nos. 4 and 5

**CORAM : SMT. VIBHA KANKANWADI
& S.G. GHAPALGAONKAR, JJ.**

DATE : 31st January, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J] :-

1. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby impugning the order dated 11.7.2019 passed by the Education Officer (Secondary) Zilla Parishad, Latur, thereby rejecting the proposal of the petitioner for seeking approval for the post of Peon with respondent No.5 school.

2. The petitioner contends that respondent No.4 school receives grant-in-aid. Mr. Lalji Vasant Rao Mane was serving as a Peon on temporary basis in the school. However, his services were terminated vide notice dated 30th March, 1993. The respondent No.4 management had issued an advertisement for filling up various posts including the post of Peon earlier held by Mr. Lalji Mane. The petitioner responded to the said advertisement and submitted his candidature. He was called for interview on 31st July, 1993 and immediately came to be appointed. The petitioner joined his services w.e.f. 2nd August, 1993.

3. Mr. Lalji Mane, filed appeal No. 151 of 1993, assailing the termination before the School Tribunal. The School Tribunal passed order dated 5.8.1993 to grant ad-interim ex-parte stay to termination notice. Consequently, the proposal for approval of service of the petitioner could not be forwarded to the Education Officer. The School Tribunal finally allowed the appeal of Mr. Lalji Mane vide judgment and order dated 11.11.1998, directing his reinstatement as a Peon. The management

challenged the order of the School Tribunal by filing Writ Petition No. 234 of 1999 before this Court. The said writ petition was compromised. The petitioner was also added as party in the said writ petition. Accordingly, the writ petition was disposed of with following order :-

“(i) The order passed by the School Tribunal, Aurangabad on 11.11.1998 in Appeal No. 151 of 1993 is not to be given any effect. Consequently, it would be open for the petitioner school to forward the proposal of Khandu Karmukle, who is working on the post of Peon since 1993, for approval which may be considered by the Education Officer on its own merits and in accordance with law, as expeditiously as possible, preferably within the period of three months.”

4. In pursuance of the aforesaid order passed by this Court in W.P. No. 234 of 1999, the respondent No.4 forwarded proposal for the approval of services of the petitioner w.e.f. 2nd August, 1993. However, the respondent No.3 – Education Officer, rejected the proposal vide impugned order dated 11.7.2019, recording following reasons :-

- [I] No permission was obtained prior to issuance of advertisement
- [ii] Updated roster is not filed;
- [iii] The reservation policy is not implemented;
- [iv] The staffing pattern for the post of Peon is not finally sanctioned by the Government;
- [v] The process of recruitment is not as per the Rules.

5. Mr. A.N. Irpatgire, learned advocate appearing for the petitioner would submit that the petitioner has been appointed after following due process of law. He responded to the advertisement issued by respondent No.4, appeared before the Selection Committee. He being qualified and eligible, came to be appointed on the same day. He joined the services on 2.8.1993. The joining report as regards to the petitioner was also forwarded to the Education Officer at Latur. His services were

continued subject to grant of approval. However, because of the pendency of the appeal filed by Lalji Mane, his approval could not be processed. Mr. Irpatgire would further invite attention of this court to approved staffing pattern in respect of respondent No.5 school. In all 4 posts of Peon were admissible. He would point out that the petitioner was appointed against the vacancy occurred upon termination of service of Mr. Lalji Mane. He would further point out that the petitioner was a handicap candidate. Further, in view of the compromise recorded in W.P. No. 234 of 1996 and consequential order passed by this court, there was no impediment in approving the services of the petitioner.

6. Mr. V.M. Jaware, learned AGP appearing for respondent Nos. 1 to 3 submits that as per the staffing pattern of 1992-93, four posts of peon (Sevak) were sanctioned and all those posts were filled up by the respondent No.4. The salary was released in favour of Mr. Lalji Mane during the period from 25.6.1992 to April, 1995. As such, there was no vacancy to accomodate petitioner from 2.8.1993. Further, the respondent No.4 had not verified the reservation roster from the BC Cell, Aurangabad. Consequently, respondent No.3 has rightly rejected the proposal for grant of approval.

7. We have heard the learned advocates appearing for the respective parties and perused the record tendered into service. It is apparent that the appointment of the petitioner was made in pursuance of the advertisement dated 28.7.1993 issued by respondent No.4. It is not in dispute that the services of Mr. Lalji Mane were terminated w.e.f. 30.3.1993. The petitioner was interviewed on 31.7.1993 and joined on the post of Peon on 2.8.1993. The communication was made to the office of the Education Officer informing appointment and joining by the

petitioner on the post of Peon with respondent No.4 school.

8. The termination order of Lalji Mane was subject matter of appeal No. 151 of 1993 before the School Tribunal. Said appeal was allowed on 11.11.1998. The management assailed the order of the School Tribunal in W.P. No. 234 of 1999 which was finally compromised. Mr. Lalji Mane waived his right and the management agreed to forward the proposal of the petitioner for grant of approval on the post of Peon since 1993. Aforesaid compromise culminated into order passed by this Court dated 12.4.2019. The proposal for grant of approval to the appointment of the petitioner was forwarded by respondent No.4 on 9.4.2019 and it has been rejected by the impugned order dated 11.7.2019.

9. Apparently, the appointment of the petitioner was against the vacancy created on discontinuation of the services of Mr. Lalji Mane. His termination from service has attained finality. He has waived all his claims and accommodation to the petitioner against said vacancy is given effect by the management. The affidavit in reply filed on behalf of respondent No.3 depicts that Mr. Lalji Mane was working as a Peon at the time of appointment of the petitioner. However, it is undisputed fact that services of Mr. Laljai Mane were terminated w.e.f. 30.3.1993. Therefore, it will have to be presumed that the post of Lalji Mane was vacant as on the date of appointment of the petitioner. It is not in dispute that in al, 4 posts of Sevaks (Peon) were sanctioned as per the staffing pattern and one post had fallen vacant on discontinuation of Mr. Lalji Mane. Although it is sought to be contended on behalf of the respondent No.3 that the petitioner was appointed from OBC category, however, it is evident that the appointment of the petitioner was from open category, whereas, one

Mr. R.M. Kamble was appointed on the post from reserved category. Nothing is brought before this court to indicate that there was violation of the reservation policy. The proposal for approval of the petitioner was forwarded to the respondent No.3 in tune with the order passed in W.P. No. 234 of 1999.

The record indicates that after appointment of the petitioner, respondent No.5 had forwarded joining report dated 2.8.1993, informing Education Officer that the petitioner has been appointed on the post of Peon and he has joined. Consequently, the Education Officer had the knowledge of the appointment of the petitioner. Even, Education Officer had called upon the respondent No.4 to forward the proposal for approval of the appointment. It is, therefore, clear that the reasons given in the impugned communication dated 11.7.2019 are afterthought.

10. We are satisfied that there is no violation of reservation policy and the appointment of the petitioner is against a clear and vacant post. The petitioner who is rendering his services since the year 1993 cannot be deprived of the benefit at this stage. Consequently, we proceed to pass the following order :-

ORDER

[A] The writ petition is allowed;

[B] The impugned communication dated 11.7.2019 is hereby quashed and set aside;

[C] The respondent No.3 is hereby directed to grant approval to the appointment of the petitioner as a Peon in respondent No.5 school from the date of his appointment, as against a post, fallen vacant on account of discontinuation of the services of Mr. Lalji Mane;

[D] Respondent Nos. 4 and 5 shall forward a proposal for inclusion of the petitioner's name in the Shalarth Pranali and take further steps for release of financial benefits as admissible to the petitioner.

[E] It is made clear that if salary/financial benefits are released in favour of Mr. Lalji Mane in pursuance of the interim/final order passed by the School Tribunal in Appeal No. 151 of 1993, such amount be appropriated against the salary bills of the petitioner for the relevant period.

[F] Writ petition stands disposed of in above terms.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-