



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

Writ Petition No.2931 of 2023

1. **Chhaganlal S/o Durgaprasad Agrel,**
Aged about 38 years,
Occupation : Clerk (Gram Panchayat,
Kurahadi, District Gondia),
R/o At + Post Kurhadi (Shahid),
Tahsil Goregaon, District Gondia-441801.

2. **Shri Sunil S/o Bhaiyyalal Vaghade,**
Aged about 36 years,
Occupation : Clerk (Gram Panchayat
Mundipar, District Gondia,
R/o At + Post Mundipar,
Tahsil Goregaon, District Gondia-441801.

3. **Shri Vitthal S/o Natthu Shahare,**
Aged about 46 years,
Occupation : Peon (Gram Panchayat
Zarpada, District Gondia),
R/o At + Post Zarpada, Tahsil Arjuni (Mor),
District Gondia-441701.

4. **Shri Lomesh S/o Khushal Gahane,**
Aged about 35 years,
Occupation : Water Supplier
(Gram Panchayat Nimgaon, District Gondia),
R/o At + Post Nimgaon,
Tahsil Arjuni (Mor),
District Gondia-441701.

5. **Shri Bhartram S/o Ramchandra Sayam,**
Aged about 45 years,
Occupation : Peon (Gram Panchayat
Aasalpani, District Gondia),
R/o At Bolunda, Post – Timezari,
Tahsil Goregaon, District Gondia-441801.

... **Petitioners**

Versus

1. **The State of Maharashtra,**
Department of Rural Development,
through its Under Secretary,
Construction Building,
Marzban Path, Fort,
Mumbai-400001.
2. **Zilla Parishad, Gondia,**
through its Chief Executive Officer,
Collectorate Administrative Building,
Amgaon Road, Fulchur Peth,
Gondia-441601.
3. **Divisional Commissioner, Nagpur,**
Old Secretary Building, Samaj Kalyan
Office Road, Civil Lines,
Nagpur-440001.

... **Respondents**

Mrs. Gauri Venkatraman, Counsel for Petitioners.

Shri A.S. Fulzele, Additional Government Pleader for Respondent Nos.1 and 3.

Shri A.Y. Kapgate, Counsel for Respondent No.2

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : OCTOBER 16, 2024

ORAL ORDER (PER NITIN W. SAMBRE, J.) :

1. Heard the learned counsel appearing for the parties.
2. The petitioners are claiming to be the employees of the Gram Panchayats in Gondia District, who have completed more than ten years of continuous service.
3. The prayer in the petition is for seeking a declaration that the respondent No.1-State Government has no authority and power to modify the scheme of reservation provided by Rules 10-A and 10-B of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967

(for short, hereinafter referred to as ‘the Rules of 1967’). A further declaration is sought that the communication dated December 01, 2022 amounts to amending the Rules 10-A and 10-B of the Rules of 1967 and as such, same is not sustainable in law, being without authority. A further declaration is also sought that the action taken pursuant to the aforesaid communication dated December 01, 2022 is unsustainable and illegal and therefore the said communication be quashed and set aside. A declaration is also sought that the benefit of 10% reservation meant for the employees of Gram Panchayat pursuant to the Rules of 1967 be conferred upon the petitioners.

4. The facts necessary for deciding the petition are as under :

The petitioners are claiming to be the employees of various Village Panchayats for last more than ten years in Gondia District, are intending to avail the scheme of absorption in the employment of Zilla Parishad (District Services Class-III and Class-IV Posts) against 10% reservation available to the Village Panchayat employees under the Rules of 1967. According to the petitioners, such reservation is provided for recruitment to Class-III and Class-IV posts in Zilla Parishad. Rules 10-A and 10-B of the Rules of 1967 are claimed to be a complete Code in itself, which provide for the procedure to be adopted by preparing the seniority list of Panchayat servants, like the petitioners, who are qualifying the requisite eligibility criteria prescribed under Rule 10-A for appointment of

Panchayat servants in District Services Class-III and Class-IV of Zilla Parishad Services, which quota was made effective from March 18, 2005.

5. Vide communication dated September 28, 2018 issued by the State Government to all the Divisional Commissioners and the Chief Executive Officers of the Zilla Parishads, it is reiterated that 10% of the total posts declared vacant for recruitment should be made available for the Panchayat employees in accordance with Rules 10-A and 10-B of the Rules of 1967.

6. Respondent-Zilla Parishad, Gondia issued an advertisement for direct recruitment of Group-C/Class-III posts to the extent of 257 vide advertisement dated March 01, 2019. It is claimed that up to December 31, 2019, out of the total sanctioned posts, 321 posts were vacant to be filled in by direct recruitment. It is claimed that in view of reservation of 10% prescribed under the Rules of 1967, 32 posts should have been filled in from the Panchayat employees by selecting the candidates as per the seniority list maintained pursuant to Rule 10-A by the Zilla Parishad. It is claimed that vide communication dated December 01, 2022, the respondent No.1 has issued instructions as to the mode and manner in which the advertisement is to be published, thereby considering the number of vacancies. It is claimed that such communication dated December 01, 2022 indirectly modifies the scheme, as reflected in Rules 10-A and 10-B of the Rules of 1967. As a sequel of which, the posts

which were to be made available for recruitment to the Panchayat employees are being reduced unauthorizedly.

7. In this backdrop, the counsel for the petitioners, Mrs. Venkatraman, would invite attention of this Court to the directions dated April 06, 2005, whereby legal right is created in favour of the candidates, like the petitioners, of appointment on Class-III and Class-IV posts in District Services of Zilla Parishad, they having completed continuous full time ten years of service with the Village Panchayat and have not exceeded the age of 45 years. According to her, Rule 10-A of the Rules of 1967 provides for eligibility for appointment of certain Panchayat servants in District Services Class-III and Class-IV categories. She would claim that Rule 10-A contemplates preparation of seniority. The procedure to be adopted in the matter of preparation of seniority list is provided under Rule 10-B of the Rules of 1967. According to her, if the said mandate is adopted by the respondent-Zilla Parishad, the respondent-Zilla Parishad should have advertised 232 posts and not 257 posts. She would claim that the directives issued under the impugned communication dated December 01, 2022 are arbitrary and without authority of law, as the field of appointment in the District Services of Zilla Parishad is governed by the Rules of 1967, which are not being strictly adhered to. According to her, the impugned communication has resulted in reserving less than 10% of the vacancies from Class-III and Class-IV categories, as the recruitment

process initiated in 2019 vide Advertisement No.1/2019 and 540/2019 was cancelled. She would claim that, as directed vide communication dated March 16, 2023, ignoring 32 posts from the recruitment process is without authority of law. That being so, the directions need to be issued to fill in 320 posts by reserving 10% of them for Class-III and Class-IV category employees to be appointed from the seniority list of Village Panchayat employees under Rules 10-A and 10-B of the Rules of 1967.

8. According to the counsel for the petitioners, the advertisement dated March 01, 2019 was pertaining to filling in 257 vacant posts in Zilla Parishad, Gondia, which excluded the recruitment of the posts reserved for Panchayat employees, like the petitioners. It is claimed that 32 posts, which were available for recruitment, were filled in against 10% quota appointments in the year 2019. As such the appointments to be made against 10% reservation quota in the year 2023 was not fulfilled, as 10% reservation for Panchayat employees under the Rules of 1967 is not provided.

9. As against above, Shri Kapgate, learned counsel appearing for the respondent No.2-Zilla Parishad, Gondia, would urge that vide Resolution dated November 15, 2022, the Government has granted approval to fill in 100% posts from the Health Department and 80% posts amongst the rest of the Departments, barring the posts of Drivers and Group-D, by directing recruitment. Same has prompted the respondents to issue advertisement

dated August 05, 2023 for filling in 339 posts in Zilla Parishad. Before the aforesaid advertisement vide advertisement dated March 01, 2019, 257 vacant posts were advertised by the respondent-Zilla Parishad to be filled in by direct recruitment. It is claimed that apart from above, 32 posts were filled in from 10% quota of Gram Panchayat employees and 10%, i.e. 32, for accommodating candidates on compassionate basis. As such, it is claimed that total 321 posts were vacant and that being so, appropriate percentage, like that of one required for the petitioners, was maintained. The 32 employees of the Gram Panchayat were accordingly given appointment orders by the Zilla Parishad through its General Administration Department and as such these 32 employees continued as against the cancellation of the examination portal in relation to the advertisement of 2019. As such, it is claimed that these 32 posts are rightly considered from 10% quota, which is earmarked under Rules 10-A and 10-B of the Rules of 1967.

10. The respondent Nos.1 and 3, i.e. the State Government and the Divisional Commissioner respectively, have clarified the aforesaid stand in their affidavit dated January 02, 2024, which reads thus :

“7. It is submitted that, in March 2019, vide advertisement dated 26/02/2019, 257 vacant posts were advertised by the Zilla Parishad, Gondia for direct recruitment. Apart from this, 32 posts were to be filled in from 10% quota of Gram Panchayat employees and 10%, i.e. 32, from compassionate basis. Thus, in all 321 posts were vacant. Since, as per the

policy of respondent no.1, 10% posts of the posts were required to be filled from the Gram Panchayat employees; 10% posts, i.e. 32 posts, were required to be filled from the Gram Panchayat employees as per the seniority list maintained by Zilla Parishad. Vide the proceeding dated 11/09/2019 of General Administration Department of Zilla Parishad, Gondia, following this 10% quota policy, 32 employees of Gram Panchayats were given appointment orders. Incidentally, subsequently, vide Government Resolution dated 21/10/2022, due to COVID-19 and thereafter due to the cancellation of examination portal, the advertisement dated 26/02/2019 was cancelled.

8. It is further pointed out that, vide Government Resolution dated 15/11/2022, approval was granted to fill up 100% posts from health department and 80% posts amongst the rest of the department (barring the posts of drivers and Group-D) from the quota of direct recruitment. Accordingly, advertisement no.-1/2023 dated 05/08/2023 was issued for filling 339 posts in Zilla Parishad, Gondia to be filled by direct recruitment.”

11. As such, it is claimed that the petition is liable to be dismissed.

12. As against above, through an additional affidavit, the petitioners have claimed that the adjustment of post by the respondents is incorrect and hence has sought a declaration that the 32 posts, which are filled in pre-covid era cannot be considered from the category of 10% quota meant for the Village Panchayat employees, as in each direct recruitment 10% reservation under the Rules of 1967 is provided.

13. Having considered the rival claims, this Court is required to be sensitive to the recruitment rules, particularly Rules 10A and 10-B,

referred above. The petitioners, who are Village Panchayat servants, having completed 10 years of continuous full time service with the Village Panchayat, are claiming to be eligible for appointment to Class-III and Class-IV posts in the District Services. Such appointments are required to be made by the Chief Executive Officer of Zilla Parishad directly on the basis of seniority from amongst the Village Panchayat servants. The procedure to be adopted in the matter of maintenance of seniority is provided under Rule 10-B of the Rules of 1967. Sub-rule (2) of Rule 10-A contemplates the filling up of not less than 10% of seats from Class-III and Class-IV posts in the District Services from the cadre of Panchayat employees.

14. Accordingly, against Advertisement No.01/2019 and 540/2019, it appears that the 32 employees were appointed in the Zilla Parishad District Services by exhausting 10% quota of Gram Panchayat employees. It is also an admitted position on record that 32 employees from the seniority list of Village Panchayat employees were given appointment with the Zilla Parishad. The Covid Pandemic has led to cancellation of the examination portal, viz. the advertisement dated February 26, 2019. However, 32 employees from the seniority list of Village Panchayat employees were appointed. Such appointments were decided to be adjusted in the recruitment carried out in the year 2023 so as to maintain

the reservation of 10% provided under Rules 10-A and 10-B of the Rules of 1967.

15. Even if there are pleadings in support of the petitioners being qualified to be appointed as District Services of Zilla Parishad, Gondia, this Court is not required to delve into the said controversy.

16. The contentions of the petitioners are required to be appreciated in the light of Rules 10-A and 10-B of the Rules of 1967.

17. Rule 10-A of the Rules of 1967 contemplates the appointments to be made by the Chief Officer of the concerned Zilla Parishad directly on the basis of seniority from amongst the Panchayat servants. It further contemplates not less than 10% of the total posts declared to be vacant in a cadre pertaining to Zilla Parishad shall be filled in from amongst the Panchayat servants.

18. The fact remains that pursuant to the mandate prescribed under Rule 10-B of the Rules of 1967, the petitioners' names are placed in the seniority list maintained, is not factually disputed. The only dispute, which requires to be appreciated, is whether 32 posts, which were filled in against the recruitment carried out pursuant to advertisement of 2019, could have been said to be restricted to said advertisement and cannot be carried forward and adjusted against the recruitment to be carried out in 2023.

19. The petitioners' attack is on the communication dated December 01, 2022. The said communication issued by the State Government permits issuance of fresh advertisement in relation to the cancellation of recruitment process, which was taken pursuant to advertisement of 2019. It further directs the adjustment of the posts which were filled in 2019 as per Rules 10-A and 10-B of the Rules of 1967.

20. The aforesaid communication cannot be said to be illegal, as the fact remains that in 2019, when the recruitment was carried out pursuant to the advertisement, but for 10% of the posts, the rest of the recruitment was cancelled in view of covid pandemic. It is the policy of the respondents to fill in 10% of the vacancies in the District Services and not above or less than it.

21. The counsel for the petitioners has failed to demonstrate that in any recruitment process, more than 10% of the vacancies can be made available to the candidates, like the petitioners. As such, the recruitment in 2019, which was partly honoured by giving appointments to 32 Village Panchayat employees whose names were noted on the seniority list maintained under Rule 10-B, are rightly said to be adjusted in the subsequent recruitment process to be taken in 2023, as such decision by way of impugned order is in tune with the requirement under Rules 10-A and 10-B of the Rules of 1967. The contention that each recruitment has to be considered independently under Rules 10-A and 10-B, referred

above, and even if the entire recruitment is not taken to its logical end by filling in other than 10% of the posts reserved for Village Panchayat employees, if accepted, will amount to interpreting the Rules contrary to their object. Even if in express terms, the Rules do not provide for adjustment of the recruitment of 32 employees from Village Panchayat cadre, the respondents in the impugned order were sensitive to the balance vacancies in 2019, which were not filled in by way of direct recruitment and very same posts are advertised including few subsequent vacancies in 2023. In such eventuality, it cannot be said that the decision of the respondents goes contrary to the very scheme of Rules 10-A and 10-B of the Rules of 1967.

22. As such, it cannot be said that the impugned communication dated December 01, 2022 in any way amends the Rules of 1967 or violates the mandate provided under the said Rules.

23. That being so, the petition lacks merit and the same stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)