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

WRIT PETITION NO.6726/2018

Arun s/o Dewman Chavan Vs. State of Maharashtra and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Mr. V.B.Bhise, Advocate for petitioner.
Mr. A.M. Kadukar, AGP for respondent no.1.
Mr. Kiran Malokar, Advocate for respondent nos.2 and 3.
Mr. A.S.Dhore, Advocate for respondent nos.4 and 5.

CORAM : NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.
DATE : AUGUST 22, 2024.

P.C.

Heard.

2. An oral proclamation came to be issued by the respondent no.4-Gram Panchayat inviting applications for filling up the post of "Gram Vidyut Vyevasthapak'.

3. The petitioner since was holding all requisite qualifications applied on 23rd August 2017 to the post of `Gram Vidyut Vyevasthapak'

4. After the assessment of the candidature of the petitioner through documents submitted by him, the respondent no.4 issued a communication on 26th February, 2018, thereby disclosing that the petitioner is not fit for the post of `Gram Vidyut Vyevasthapak' as the petitioner failed to satisfy the requirements under the Government Resolution dated 20th October, 2016 by which, such appointments shall govern.

5. According to the petitioner, the essential criteria for the appointment to be carried out on the said post are that: (a) candidate must be residing in the Gram Panchayat area and possessing requisite qualification prescribed in the Resolution. (b) In case, the suitable person within the area of operation of the Gram Panchayat is not available, the candidature of other qualified person residing within five kms.of the Gram Panchayat area can be considered. (c) If, in case, suitable person within aforesaid five kms. of radius is not available, such other employee, who has worked with franchisees appointed by M.S.E.D.C.L.like at Crompton Greaves, Jalgaon, SNDL, Nagpur, G.P.L. Aurangabad (Torrent) at Bhivendi having five years of experience can be considered for an appointment.

6. The candidature of the petitioner is held to be not qualified for the reason that though he is residing within five kms.of the area of the respondent-Gram Panchayat, he is residing within the adjacent of the Municipal Council area.

7. It is the contention of the petitioner that merely because the petitioner is residing in the Municipal Council area, he is qualifying the condition of residence of five kms. radius of village. Just because of residence of the petitioner fall in municipal area, that by itself, is not incur a disqualification of the petitioner's candidature. He would claim that even otherwise the condition incorporated under Clause 7 to the aforesaid effect needs to be held discriminatory, as it does not stand to the scrutiny of Articles 14 and 16 of the Constitution of India. It is

claimed that based on the ground of residence, candidature of the person in public employment cannot be discriminated, as it is hit by the mandate provided under Articles 14 and 16 (2) of the Constitution of India.

8. At the outset, the Assistant Government Pleader has sought adjournment in the matter on the ground that instructions for filing reply are awaited.

9. We are rejecting such request of the Assistant Government Pleader for the reason that the notice in the present matter was ordered on 10th October, 2018 and the notice waived by the learned Assistant Government Pleader. It is almost for last six years reply is not placed on record by the respondent no.1.

10. Apart from above, vide reasoned orders dated 2nd February, 2024 and 30th July, 2024, we have granted time and last chance in the matter to the respondent no.1.

11. As against above, the learned Assistant Government Pleader has invited attention to the very object with which the condition of residence is incorporated within Gram Panchayat area or within five kms.of the Gram Panchayat area is incorporated. He would draw support from the language employed in the introduction of the Government Resolution dated 12th October, 2016 and also urge that the object, which is sought to be achieved by the appointment of the Gram Vidyut Vyevasthapak is required to be appreciated.

12. The said very argument are also endorsed by the counsel appearing by rest of the respondents. As such, the disqualification of the petitioner is quite justified.

13. We have appreciated the submissions.

14. The issue which warrants, in our opinion, consideration is, as to whether just because the petitioner is residing within the Municipal Council area, which is located within five kms. of the respondent no.4-Gram Panchayat area can be said to have incurred disqualification for consideration for the post of `Gram Vidyut Vyevasthapak'. If we carefully perused the Condition no.7 of the Government Resolution dated 20th October, 2016, which is relied on for the purpose of the ordering disqualification of candidature of the petitioner, what can be noticed is that the petitioner though residing within five kms. of radius of the Gram Panchayat area, just because he is residing in the Municipal Council area cannot be held to be not eligible for the appointment as `Gram Vidyut Vyevasthapak'.

15. There is no express embargo to that effect in Condition no.7 or otherwise in the Government Resolution dated 20th October, 2016. Even otherwise, the Condition no.7 cannot be read down to mean that an absurd meaning can be drawn by inferring that just because a candidate resides within five kms radius of the Gram Panchayat area and such area falls within the jurisdiction of the Municipal Council can be said to be disqualified for an appointment on the ground of residence. Such

interpretation is hit by mandate provided in Article 16 (2) of the Constitution of India.

16. We fail to understand that how such unreasonable interpretation can be accepted or the Condition no.7 can be said to be justified when it can be open for the employer to make it mandatory for the selected candidates to reside post-appointment within jurisdiction of the Gram Panchayat area so as to achieve the object of the Scheme.

17. In the aforesaid background, the decision of the respondents in disqualifying the candidature of the petitioner on the ground of residence cannot be said to be justified and as such to that extent the decision is hereby quashed and set aside.

18. In that view of the matter, we deem it appropriate to direct the respondent nos.4 and 5 to consider the claim of the petitioner for an appointment on the post of `Gram Vidyut Vyevasthapak' to carry out work within the jurisdiction of the respondent nos.4 and 5, if he is otherwise qualified by not disqualifying him on the ground of residence.

19. Let the aforesaid process be completed within a period of four weeks from the date of production of this order, as they were informed that in view of operation of the order of status quo, the appointment is withheld for last six years.

20. Petition stands allowed in the aforesaid terms. No costs.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**