



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3489 OF 2020

Mohammed Rehan Riyaz Ahmed

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. C.V. Dharurkar, Advocate for petitioner

Mr. P.S. Patil, A.G.P. for respondent nos. 1 and 2

Mr. A.S. Deshpande, Advocate for respondent nos. 3 and 4

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CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.

DATE : 24th APRIL, 2025

PER COURT :

1. Heard.

2. This writ petition takes exception to order dated 07th February, 2020 turning down the proposal for approval to the appointment of the petitioner on the post of peon. The reasons for turning down the proposal are three in number. For better appreciation, those are reproduced below :-

(I) Reliance on Government Resolution dated 25th November, 2005, since the appointment was not on approved post.

(II) There was ban for recruitment of teaching and non-teaching staff vide Government Resolution dated 02nd May, 2012.

(III) The staffing pattern relating to the post of clerks, librarian and lab assistant was approved but the same in relation to Clause 4 employees was not approved under Government Resolution dated 28th January, 2019.

3. Learned A.G.P. proposes to add additional grounds, which are not referred to in the order impugned herein. The same is the Government Resolution dated 11th December, 2020 mandate the recruitment of Class IV employees to be made on contract basis and the institute should be paid a lump-sum amount in that regard.

4. The matter has a history. The petitioner had earlier approached this Court in Writ Petition No. 8709 of 2018 challenging the rejection of approval dated 03rd November, 2010. The petitioner's proposal that was turned down earlier was in fact directed to be reconsidered vide order dated 05th March, 2019 passed by this Court in the very writ petition. Paragraph no.6 of the said order reads thus :-

“6. The education officer shall take decision on its own merits on the proposal submitted by management (page 22) to the effect that one post has become vacant as one Pinjari Shaikh Abid Shaikh Hussain is promoted to the post of clerk thereby rendering the post of peon vacant and the petitioner be considered on the said vacant post. The respondent – education officer shall take decision on the said proposal according to law on its own merits expeditiously and preferably within four months.”

5. The management thereafter moved the proposal to the Education Officer on 23rd April, 2019 i.e. after Government Resolution dated 20th January, 2019 was issued. In our view, the order was very specific. The Education Officer was directed to complete the exercise within four months from the date of the order. He was duly represented in the said writ petition, meaning thereby, he was well aware of the order. Had he decided the proposal within the time frame given by the Court, there would not have been hurdle of Government Resolution dated 28th January, 2019. In our view, for that exercise independent proposal should not have been submitted by the management, the Education Officer ought to have solicited the same. Be that as it may.

6. Admittedly, one post of peon became vacant on account of promotion of one *Pinjari Shaikh Abid Shaikh Hussain*. The petitioner's appointment has been made by following due process. The first ground in the impugned order would, therefore, be of no avail to the Education Officer since the claim of the petitioner was to be considered on a post that had become vacant on account of promotion. Since the petitioner's appointment dates back to 2009, there was no question of bar to the recruitment vide Government Resolution dated 02nd May, 2012. The said ground we have already addressed hereinabove. Although vide Government Resolution dated

11th December, 2020 now there is ban for recruitment for post of Class 4 employees and a lump-sum amount is being paid towards *bhatta* or salary, the same also do not come in the way since the sanctioned post became vacant long before the said government resolution came into force and there was direction of this Court to consider the claim of the petitioner. We find no reasonable justification was offered by the Education Officer to turn down the petitioner's proposal for approval. As such, we find the petition to have merit and the same deserves to be allowed.

7. The writ petition, therefore, is allowed in terms of prayer clauses (B) and (C). However, the approval shall be with effect from the post of peon to have become vacant i.e. in the year 2014.

(SANDIPKUMAR C. MORE, J.)

SSD

(R.G. AVACHAT, J.)