



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

WRIT PETITION NO. 12952 OF 2021

Vijay Kashinath Honrao

Age : 51 Years, Occ. Service as Junior Assistant,
R/o C/o Shri Kishor Rajhans, Yogayog Society,
House No. 2, N-2, HUDCO, Aurangabad
Cell No.9860596714

... PETITIONER

VERSUS

1. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer
2. The Divisional Commissioner,
Aurangabad Revenue Division,
Aurangabad
3. The Principal Secretary,
Rural Development &
Water Conservation Department,
Mantralaya, Mumbai 400 032

... RESPONDENTS

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Mr. Ajay S. Deshpande, Advocate for the Petitioner

Mr. S. R. Dheple, Advocate for Respondent No.1

Ms D. S. Jape, AGP for Respondent Nos. 2 and 3

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**CORAM : MANGESH S. PATIL &
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 19.03.2025
PRONOUNCED ON : 01.04.2025**

JUDGMENT (Per Y. G. KHOBRADE, J.)

1. Rule. Rule made returnable forthwith. With consent of both the sides, it is heard finally at the stage of admission.

2. By the present petition under Article 226 of the Constitution of India, the petitioner prays for Writ of Mandamus directing respondent No.1 Zilla Parishad to appoint him on the post of Stenographer (Lower Grade) from the date of his absorption i.e. 20.05.2014 and to extend him all the benefits flowing therefrom including differences of pay between drawn and received by him in terms of judgment and order dated 10.10.2013 passed by this Court in Writ Petition No.6344 of 2012. The petitioner further prays for consideration of his past service period of 17 years i.e. his initial appointment on contract basis i.e. from 01.01.1997 for the pensionary and time scale promotional benefits.

3. Initially, the petitioner came to be appointed as Stenographer (Lower Grade) by respondent No.1 on 23.12.1996 for a period of six months under District Primary Education Programme (DPEP). The scheme came to an end on 30.06.2003. Thereafter, the petitioner was appointed on contract basis under "*Sarva Shiksha*

Abhiyan", scheme floated under District Primary Education Programme (DPEP). On 20.12.1997, the State Government issued a Government Resolution and framed policy for absorption of the petitioner with other employees. The proposals for absorption of the petitioner with other employees were forwarded by Respondent No.1 to the Rural and Water Conservation Department, State of Maharashtra. Another employee Shri G. B. Thale was absorbed on regular establishment but the petitioner was not absorbed. Therefore, the petitioner had approached before this Court by filing Writ Petition No.6344 of 2012 and had prayed for issuance of directions to Respondent no. 1 to absorb him on the post of Stenographer (Lower Grade) as per the Government Resolution dated 20.12.1997.

4. On 10.10.2013, this court passed Judgment and order directing Respondent No.1 to issue necessary order about absorption of the petitioner on the establishment of Zilla Parishad against the available vacancy and to forward appropriate proposal to the Divisional Commissioner and after receiving sanction, to issue order of absorption of the Petitioner on the post of Stenographer (Lower Grade) save and except pensionary benefit but the petitioner would not be entitled for monetary benefits in respect of the period prior to

issuance of the order of absorption. In compliance of the order, the petitioner furnished an undertaking on 07.05.2014. Thereafter, on 20.05.2014, respondent No.1 issued an order and absorbed the petitioner on the post of Junior Assistant (Clerk) in the pay scale of Rs.5200-20200 (Grade Pay Rs.1900) on certain terms and conditions.

5. On 29.09.2015, respondent No.1 published seniority list of Junior Assistant (Class-3) (Clerical) and first date of appointment of the petitioner on that post was shown as 01.01.1997 and first appointment of the petitioner on the post of Clerk was shown as 20.05.2014. Again, on 01.01.2020, the respondent No.1 published seniority list wherein first date of appointment of the petitioner was shown as 20.05.2014.

6. On 18.02.2020, the petitioner submitted a representation and claimed that, as per the judgment and order passed by this Court in Writ Petition No.6344 of 2012 on 10.10.2013, he was entitled to the pensionary benefits by considering his previous service, however, while preparation of seniority list his first appointment to the post of Junior Assistant was wrongly shown shown as 01.01.2015 instead of 01.01.1997. Therefore, he prayed for correction in the seniority list.

7. The Respondents have filed reply affidavit and strongly resisted the petition. According to the Respondents, the petitioner was appointed on the post of Stenographer (L.G.) under the District Primary Education Programme on contractual basis, till he was absorbed on the post of Junior Assistant (Clerk) as per Judgment and order dated 10.10.2013 passed by this Court in Writ Petition 6344 of 2012. The petitioner furnished written undertaking on 20.05.2014 stating that, in future he would not claim any right over higher post till his absorption on the post of Junior Assistant. So also, the appointment of the petitioner w.e.f. 01.01.1997 was not on the substantive post, therefore, the petitioner can not be equated with a permanent employee of Respondent No.1. Hence, the petitioner's initial appointment was considered w.e.f. 01.01.2015. Though the petitioner claims that, Shri S. D. Devane, the Driver working under the Zilla Parishad Nanded has been extended old pensionary benefits vide communication dated 06.03.2017 as a special case but said benefits can not be extended to the petitioner. Hence, they have prayed for dismissal of the petition.

8. Section 253 of the Maharashtra Zilla Parishad And Panchayat Samitis Act, 1961 provides that the Zilla Parishad may

appoint any person not being a member of any service under a contract for special purpose, in accordance with rules prescribed by the State Government in this behalf. Sub Rule (iii-a) of Rule 2 of the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 provides “continuous service”, means a service without break after the regular appointment on any post made in accordance with these rules and as per the relevant orders regarding procedure of appointment issued by the State Government from time to time.

9. In case in hand, on 01.01.1997, the petitioner was appointed first time on the post of Stenographer (Lower Grade) on contract basis but subsequently he was absorbed as a Junior Assistant (Clerk) with respondent No.1 in pursuance of Government Resolution dated 20.12.1997. The initial appointment of the petitioner on the post of Stenographer (Lower Grade) was purely on contract basis and was not on substantive and clear, vacant post. Therefore the petitioner cannot claim benefits at par with other permanent employees of respondent No.1.

10. The petitioner was absorbed as a Junior Assistant (Clerk) on 20.05.2014 and he was not absorbed on the post of Stenographer

(Lower Grade). The petitioner had joined the post of Junior Assistant without any protest and furnished undertaking. Therefore, the Respondents can not be directed to absorb him w.e.f. 20.05.2014 on the post of Stenographer (Lower Grade) because the said post was not sanctioned and was not vacant. Therefore, the petitioner can not be equated with the permanent employee of Respondent No.1 while fixation of seniority list.

11. Therefore, we are not inclined to issue writ of mandamus, directing respondent No.1 Zilla Parishad to consider appointment of the petitioner on the post of Stenographer (Lower Grade) from the date of his absorption i.e. 20.05.2014 which was as a Junior Assistant (Clerk) and cannot extend him any benefits flowing therefrom. No right has been created in the petitioner for appointment on the post of Stenographer (Lower Grade) from the date of his absorption i.e. 20.05.2014. Accordingly, the writ petition is dismissed. Rule is discharged.

[Y. G. KHOBRAGADE, J.]

[MANGESH S. PATIL, J.]