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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2847 OF 2024

Santosh Shivshankar Gore,
Age-47 years, Occu-Service,
R/o Khamaswadi, Tq.Kallam,
Dist.Dharashiv,
At present residing at
Bandalwadi, Post Gunwadi,
Tal.Baramati, Dist.Pune

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai
2. The Chief Executive Officer,
Zilla Parishad, Latur,
3. The District Collector, Latur,
District Latur,
4. District Health Officer,
Zilla Parishad, Latur i.e.
Member Secretary of the Selection
Committee
5. Vishal Sandipan Deshmukh,
Through the Chief Executive Officer,
Zilla Parishad, Latur

-- RESPONDENTS

WITH
CIVIL APPLICATION NO.10232 OF 2024
(Vishal Sandipan Deshmukh Vs. Santosh Shivshankar Gore and others)

Mr.S.S.Jadhavar, Advocate for the petitioner.
Ms.R.R.Tandale, AGP for the respondent/State.
Mr.U.B.Bondar, Advocate for respondent Nos. 2 and 4.
Mr.A.S.Shelke, Advocate for respondent No.5.

(CORAM : R.G.AVACHAT AND
PRAFULLA S. KHUBALKAR, JJ.)

DATE : MARCH 28, 2025

ORAL JUDGMENT : (Per Prafulla S.Khubalkar, J.)

1. Heard learned Advocates for respective sides. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. Petitioner has challenged his disqualification by respondent Nos. 2 and 4 for the post of 'Health Supervisor' alleged to be on the ground of he having crossed the age limit. The petitioner has also sought for directions to appoint him on the post of 'Health Supervisor' from open category. By way of amendment, a challenge is also raised to the appointment of respondent No.5 and directions are sought for initiating the proceedings of contempt of court against respondent Nos. 2, 4 and 5 alleging intentional disobedience of order dated 14.03.2024 passed by this Court in the instant petition.

3. The facts succinctly put are as under :-

[a] The CEO, Zilla Parishad, Latur, the Respondent No.2 published advertisement No.1/2019 dated 02.03.2019 inviting applications for various posts including the post of Health Supervisor.

[b] Pursuant thereto, the petitioner being eligible and qualified in all respects, submitted application.

[c] The selection process based on advertisement dated 02.03.2019 was cancelled on account of parliament and assembly elections.

[d] On 21.10.2022, respondent No.1 issued a GR providing thereby that consequent to cancellation of earlier recruitment process, the candidates who had crossed upper age limit would be allowed to appear in the next selection process.

[e] On 03.03.2023, another GR was issued by the General Administration Department which provided for relaxation for upper age limit by 2 years with respect to advertisement which were to be issued upto 31.12.2023.

[f] Respondent No.2 published Advertisement No.1/2023 for various posts including the post of Health Supervisor. Clause No.15 of the advertisement provided that the candidates who had applied in response to the advertisement No.01/2019 would be granted relaxation

in upper age limit.

[g] Petitioner submitted his application in response to the advertisement.

[h] The petitioner appeared in the written examination and secured 122 marks out of 200 and was placed at Sr.No.1 in order of merit. Respondent No.5 had secured 120 marks and was placed at Sr.No.2 in order of merit.

[i] The scrutiny of documents of the petitioner was held on 20.02.2024.

[j] On 20.02.2024, respondent Nos. 2 and 4 published select list which showed name of respondent No.5 as a selected candidate. The name of petitioner was not included in this selection list, although he had secured more marks than the respondent No.5.

[k] On enquiry about non inclusion of his name, the petitioner was informed by respondent Nos. 2 and 4 that he was declared ineligible on account of having crossed upper age limit.

[l] On 22.02.2024 and 26.02.2024, petitioner submitted representations to the respondents inviting their attention to the GR dated 21.10.2022 and clause No.15 of the advertisement providing for age relaxation with respect to the candidates who had applied in

response to the advertisement of the year 2019.

[m] Since the respondents ignored the claim of the petitioner, he filed instant petition on 08.03.2024.

4. It is pertinent to note that by order dated 14.03.2024 in this petition, notices were issued to the respondents and this Court directed the parties by way of an ad-interim order, to maintain status-quo with a further direction to keep one post vacant until further orders.

5. In response to the petition, respondent Nos. 2 and 4 have filed their affidavit in reply dated 12.08.2024. So also respondent No.5 had filed affidavit in reply dated 12.08.2024.

6. Advocate Mr.S.S.Jadhav, learned counsel for petitioner made vehement submissions by pointing out clause No.15 of the advertisement No.01/2023 which provided for grant of age relaxation to the candidates who had applied in response to the earlier advertisement of March 2019. He would strenuously submit that this clause was in consonance with GR dated 21.10.2022 and that the

decision of the respondents to disqualify the petitioner on account of he crossing age limit is absolutely arbitrary. He would further submit that despite order of status-quo passed by this Court on 14.03.2024, the conduct of respondent Nos. 2 and 4 in allowing respondent No.5 to join the post on 17.03.2024, is grossly contemptuous and requested for initiation of action of contempt of Court against respondent Nos. 2 and 4. He would therefore request for directions to appoint petitioner in place of respondent No.5.

7. As against this, the learned Advocate Mr.U.B.Bondar for respondent Nos. 2 and 4 made submissions to oppose the petition by referring to the affidavits in reply. It is submitted that the petitioner has crossed age limit and was aged 47 years on 25.08.2023 and was thus rightly disqualified. It is vehemently submitted that respondent No.5, who was second meritorious candidate, is rightly appointed by order dated 11.03.2024. As regards the non compliance of the order of status-quo, it is submitted that there was some misunderstanding as well as miscommunication with respect to the order dated 14.03.2024 and in view of disqualification of petitioner, respondent No.5 was allowed to join the duties on 17.03.2024 based on the appointment

order dated 11.03.2024.

8. The learned Advocate Mr.A.S.Shelke for respondent No.5 has also opposed the petition by referring to his affidavit in reply dated 12.08.2024. He vehemently submits that since the petitioner was disqualified, respondent No.5 was rightly appointed on the basis of his merit. He submits that the petitioner had crossed age limit of 47 years as on 25.08.2023 and therefore was rightly disqualified.

9. Learned AGP adopted the submissions of counsel for respondent Nos. 2 and 4.

10. We have considered the rival contentions and perused the papers.

11. There is no dispute that the petitioner had applied in response to the first advertisement (Advertisement No.01/2019 dated 02.03.2019), however, the selection process was cancelled. The Government Resolution dated 21.10.2022 specifically provided vide clause No.4 that the candidates, who had applied in response to the

advertisement of March 2019, would be granted age relaxation in subsequent recruitment process to avoid any kind of disqualification on account of they being over age. It is pertinent to note that Advertisement No.01/2023 also contain a specific clause bearing clause No.15/1, which incorporated similar condition by giving specific reference to GR dated 21.10.2022. It has to be noted that petitioner was found within the prescribed age limit when he had applied in response to the first advertisement of the year 2019 and was found eligible in all respects. As such, although the petitioner was aged 47 years at the time of 2nd advertisement of the year 2023, he was entitled for benefit of the age relaxation as provided by GR dated 21.10.2022 and clause No.15(1) of the advertisement No.01/2023. The respondents have failed to put forward any convincing explanation to justify the disqualification. In the wake of the GR dated 21.10.2022 and clause No.15(1) of the advertisement No.01/2023, the stand taken by the respondents that petitioner was aged 47 years as on 25.08.2023 is inconsequential particularly in view of the fact that the petitioner was found eligible with respect to age criteria in the recruitment of the first advertisement. As such, the only reason for disqualification of the petitioner of being over age is unsustainable.

12. It has to be noted that the petitioner had secured highest marks and stood first in order of merit and was entitled for being selected and appointed on the post of Health Supervisor from open category. Despite there being clear provisions in the GR dtd.21.10.2022 as well as stipulation in the advertisement (Clause 15.1), claim of the petitioner is ignored and respondent No.5 is given appointment from open category.

13. It is pertinent to note that respondent Nos. 2 and 4 were directed to maintain status-quo and one post was ordered to be kept vacant during the pendency of the instant petition. However, ignoring the mandate of the order of the status-quo, respondent No.5 is allowed to join on the post on 17.03.2024. It has to be noted that as per Advertisement No.01/2023, 3 posts of Health Supervisor were advertised, one being from Open category, one from EWS category and one from VJ(A) category. The petitioner had applied from open/un-reserved category, whereas respondent No.5 had applied from EWS category. The petitioner had secured 122 marks and was placed at Sr.No.1 in the list from open category, whereas respondent No.5 had secured 120 marks and was placed at Sr.No.1 in the EWS category.

Despite this being the position, respondent Nos. 2 and 4 have disqualified the petitioner and issued appointment order to respondent No.5 from open category so also another person by name Vikramsinh Anantsinh Gaherwar (not arrayed as party to this petition), who had secured 108 marks and was selected and placed at Sr.No.2 from EWS category, was given appointment from EWS category.

14. It has also to be noted that respondent No.2 / Chief Executive Officer of Zilla Parishad, Latur has issued a letter dated 09.09.2024, by considering the order dated 14.03.2024 passed in this petition, and had granted stay to the appointment of respondent No.5. Thus the controversy with respect to disqualification of the petitioner consequently led to wrongful appointment of respondent No.5 and one Mr.Vikramsinh Anantsinh Gaherwar. The instant petition raises challenge only to the disqualification of the petitioner and appointment order of respondent No.5.

15. As regards the allegations of contempt of court, it has to be noted that by order dated 14.03.2024, parties were directed to maintain status-quo and one post of 'Health Supervisor' was ordered to

be kept vacant until further orders. This interim order was not vacated and remained in force. Order dated 14.03.2024 also records that notices were waived on behalf of respondent Nos.2 and 4 by their Advocate. As such, respondent Nos. 2 and 4 were aware about this interim order. Despite this, respondent No.5 was allowed to join on the post on 17.03.2024. Respondent Nos. 2 and 4 had filed their affidavit in reply dated 12.08.2024 and as regards the alleged contempt, it is stated that the employee, who had attended the matter on 14.03.2024, failed to communicate the authority properly and on account of misunderstanding as well as communication gap, the interim order passed by this Court was not available with the authorities and therefore respondent No.5 was allowed to join the duties on 17.03.2024. In this regard, in view of the fact that the Advocate for respondent Nos. 2 and 4 had waived notice on 14.03.2024, the explanation submitted by respondent Nos. 2 and 4 about communication gap, is not acceptable. It is clear that respondent Nos. 2 and 4 have failed to obey the order dated 14.03.2024 passed by this Court and have in fact rendered themselves liable for action under the Contempt of Courts Act. However, in view of the fact that respondent Nos. 2 and 4 have issued a letter dated 09.09.2024 to respondent No.5,

thereby staying his appointment, the proceedings of contempt of court are not required to be carried further.

16. As regards the challenge raised by the petitioner, for the reasons recorded hereinabove, we are of the firm opinion that the decision of respondent Nos. 2 and 4 to disqualify the petitioner for the post of 'Health Supervisor' is illegal and the petitioner is entitled for appointment order on the post of 'Health Supervisor'. We find that respondent No.2 has committed illegality in issuing appointment order dated 11.03.2024 in favour of respondent No.5 from open category. We are of the opinion that in place of respondent No.5, the petitioner ought to have been given appointment order on the post of 'Health Supervisor' w.e.f. 11.03.2024.

17. As regards the status of respondent No.5, who had applied from EWS category, respondent Nos. 2 and 4 could have considered him for appointment from EWS category based on his merit. We find that despite there being an order of status-quo passed by this Court, respondent Nos. 2 and 4 have ignored the claim of the petitioner and allowed respondent No.5 to join the post from open category and

Mr.Vikramsinh Gaherwar to join the post from EWS category. In the wake of disqualification of the petitioner being found illegal and his entitlement for being appointed as Health Supervisor, respondent Nos. 2 and 4 are entitled to issue appropriate orders regarding appointment of respondent No.5 (Vishal Deshmukh) and Vikramsinh Gaherwar considering their positions in merit and available vacancies.

18. In view of the fact that the petitioner's legitimate claim for appointment is ignored by respondent Nos. 2 and 4, we find this to be a fit case in which the petitioner can be granted notional appointment w.e.f. 11.03.2024, which is the date of appointment of respondent No.5, however, without granting any salary for the period for which the petitioner has not actually worked. Since this peculiar situation has arisen because of the conduct of respondent Nos. 2 and 4, we are of the opinion that they should consider the claim of respondent No.5 from EWS category based on his merit, particularly when the appointment order of respondent No.5 is stayed by respondent No.2 by letter dated 09.09.2024.

19. In the light of above mentioned circumstances, we are of

the considered opinion that the petition needs to be allowed and interest of justice would be subserved by issuing following directions :-

[a] Respondent No.2 is directed to appoint the petitioner on the post of 'Health Supervisor' by granting him notional appointment w.e.f. 11.03.2024, from the date on which he ought to have been appointed.

[b] The petitioner be conferred with notional benefits of seniority and continuity in service, however, without any arrears of salary for the period during which he has not worked on the post of 'Health Supervisor'.

[c] Respondent Nos. 2 and 4 are directed to consider the claim of respondent No.5 and take decision about his appointment from EWS category based on his merit.

[d] The writ petition is allowed in above terms.

[e] Rule made absolute in the above terms.

CIVIL APPLICATION NO.10232 OF 2024

20. This is an application filed by respondent No.5 seeking vacation of interim order dated 14.03.2024 and seeking stay to the office order dated 09.09.2024 issued by respondent No.3 granting stay to his appointment. By this civil application, respondent No.5 had also prayed for direction to pay arrears of salary w.e.f. 18.03.2024, which is

alleged to be the date on which he had joined the duties.

21. We have perused the application and considered the submissions of respective parties. For the reasons recorded while deciding WP No.2847/2024, we have held that the disqualification of the petitioner is illegal and the petitioner is entitled for appointment in place of respondent No.5. In view of the interim order dated 14.03.2024, respondent Nos. 2 and 4 were duty bound to maintain status-quo and keep one post vacant, so that the petitioner could have been accommodated. However, respondent Nos. 2 and 4 have ignored the mandate of the interim order and have appointed respondent No.5. The applicant (respondent No.5) has failed to demonstrate any ground for vacation of interim order dated 14.03.2024 and now in view of the final decision in the writ petition, reliefs claimed vide this civil application cannot be granted. As regards salary of respondent No.5 for the period for which he has actually worked, the respondent No.2 is entitled to take decision.

22. The civil application is, therefore, rejected.

(PRAFULLA S. KHUBALKAR, J.)

(R. G. AVACHAT, J.)