

(2024) 11 BOM CK 0032

Bombay High Court

Case No: Writ Petition No. 991 Of 2024

Prathamesh Nayan Mulye

APPELLANT

Vs

State Of Maharashtra Thr The
Dept Of Education And Ors

RESPONDENT

Date of Decision: Nov. 29, 2024

Hon'ble Judges: Ravindra V. Ghuge, J; Ashwin D. Bhobe, J

Bench: Division Bench

Advocate: Chetan G. Patil, Vikas M. Mali

Final Decision: Allowed

Judgement

Ashwin D. Bhobe, J

1. Rule. Rule made returnable immediately and heard finally with the consent of the parties.

2. The Petitioner by the present Petition challenges the Order dated 20th October 2024 passed by the Respondent No. 3 refusing to grant approval to the appointment of the Petitioner to the post of Laboratory Assistant. Petitioner has sought for the following substantive reliefs :

"A. That this Hon'ble Court may be pleased to issue a writ of certiorari thereby quashing and setting aside the Order dated 20th October 2022 (being Exhibit "B" hereto) passed by Respondent No. 3 herein thereby refusing to grant approval to the appointment of the Petitioner in Respondent No. 5 School and further be released to direct the Respondent No. 3 herein to grant approval to the appointment of the Petitioner on the post of Lab. Assistant on 11th July 2012 in Respondent No. 5 School with all consequential benefits.

B. That this Hon'ble Court may be pleased to issue a writ of mandamus thereby directing the Respondent No. 2 herein to enter the name of the Petitioner in the Shalarth system and issue Shalarth Identity to the Petitioner and further direct the Respondents to release grant in aid to the Petitioner since the date of his appointment Lab. Assistant on 11th July 2012 with all consequential benefits."

Case of the Petitioners:

4. The case as set out by the Petitioner in the Petition, inter alia is that, there is a post of Lab Assistant in the Respondent No.5 school, managed by the Respondent Nos. 4, which is an aided school; on 31/05/2012, one Mr. Harishchandra Vishram Palkar who was occupying the said post of Lab Assistant superannuated; the Respondent Nos. 4 and 5 inquired with the Respondent No. 3 as to whether there are any surplus employee to be absorbed on the said post; no surplus employee was sent by the Respondent No. 3, as such Respondent Nos. 4 and 5 commenced recruitment process for the appointment of Lab Assistant; advertisement was published in the newspaper "Sakal" dated 21/06/2012 inviting applications from qualified candidates; Petitioner who was eligible and qualified applied for the said post; the selection Committee of the Respondent No. 4 found the Petitioner as a suitable candidate and consequently appointed the Petitioner to the post of Lab Assistant on 11/07/2012; Petitioner is working uninterruptedly on the said post since the date of his appointment; Respondent Nos. 4 and 5 tried to submit proposal/s seeking approval of the Petitioner's appointment, which proposals the Petitioner claims that the Respondent No. 3 refused to accept; it was only on 31/03/2022 that the Respondent No. 3 received the proposal of the Respondent Nos. 4 and 5 along with all the documents, that were enclosed thereto, however, by the order dated 20/04/2022 the Respondent No. 3 refused to grant approval; Petitioner filed Writ Petition No. 7904 of 2022 challenging the Order dated 20/04/2022; vide order dated 07/07/2022 this Court set aside the order dated 20/04/2022 and remanded the matter to the Respondent No. 3 to reconsider the proposal in terms of the existing position on the date of the appointment, within a period of 6 weeks; Respondent No. 3 failed to comply with the order dated 07/07/2022, passed in Writ Petition No. 7904/2022, as such the Petitioner filed Contempt Petition No. 703 of 2022; subsequent to the filing of the Contempt Petition, Respondent No. 3 issued the order dated 20/10/2022 rejecting the proposal submitted by the Respondent Nos. 4 and 5; that Contempt Petition No. 703 of 2022 was disposed of on 17/11/2022.

5. By the Order dated 20/10/2022 (Exh B), the Respondent No. 3 has rejected the proposal (impugned order), on the following grounds :

(a) That the Respondent Nos. 4 and 5 did not obtain prior permission in terms of the G.R. dated 6/2/2012;

(b)The advertisement was not published in two newspapers in terms of G.R. dated 6/2/2012.

(c) That there was backlog of reserved category. Without filling the post reserved the Petitioner was recruited in the open category.

6. On 8/6/2023 this Court has passed following order :

“1. Issue notice to the Respondents. Learned AGP waives service on behalf of State.

2. Hamdast allowed. In addition to service through Court, private service including by email and courier is permitted.

3. All Affidavits in Reply are to be filed and served on or before 25th July 2023.

4. Notice is made returnable on 27th July 2023.”

7. On 21/07/2023 learned AGP appeared and waived notice on behalf of Respondent Nos. 1 to 3. The endorsement on the roznama sheet dated 24/01/2024, records the Respondent Nos. 4 and 5 being duly served. Roznama further records that despite the order dated 08/06/2023, Respondents have not filed any reply.

Submissions :

8. Mr. Chetan Patil, appearing for the Petitioner submits that the Petitioner was appointed in the year 2012 and that the Respondent Nos. 4 and 5 were struggling to get approval for the said appointment from the Respondent No. 3. Mr. Patil further submits that the impugned order is passed on erroneous grounds. It is the submission of Mr. Patil that the purpose of G.R. dated 6/2/2012 is only to ascertain whether there are surplus employees and that the need for taking prior permission as contemplated in G.R. dated 6/2/2012 is not mandatory. That the advertisement dated 21/6/2012 was issued in “Daily Sakal” which has wide circulation in the region. Mr. Patil lastly submitted that the roster which is produced at Exh. D would clearly show that open post was very much available as on 01/06/2012 and merely because there was backlog of reserved category, that would not make the appointment of the Petitioner illegal. Mr. Patil submits that the Petitioner possessing all the required qualifications and the Petitioner being in uninterrupted service for last more than 10 years, as on the date of the impugned order, would require indulgence from this Court.

9. Mr. Vikas Mali, AGP for Respondent Nos. 1, 2 and 3 submits that the proposal submitted by the Respondent Nos. 4 and 5 was defective and that the Respondent No. 3 for the reasons recorded in the impugned order has rightly rejected the same. Mr. Mali supports the impugned order.

10. Indisputably, the Petitioner is in service from the date of his appointment w.e.f. 11/07/2012 and the Petitioner is working as a Lab Assistant, uninterruptedly from the said date. Respondent Nos. 1 to 3 have neither filed any reply nor contend that surplus employees were required to be absorbed to the said post of Lab Assistant in the Respondent No. 5 School.

11. The Respondent Nos. 4 and 5 have published the advertisement in the daily "Sakal". There is no dispute with regard to the said daily "Sakal" being a publication having wide circulation. Thus, considering the said two objections at serial No. 1 and 2 in the impugned order, we find that the same would at most be an irregularity attributable to the Respondent Nos. 4 and 5, which in our view can be condoned by imposing cost of Rs 50,000/- (Rupees Fifty Thousand only), payable by the Respondent Nos. 4 and 5, to be deposited with the Kirtikar Law Library, as a condition precedent. The said irregularity would not vitiate the selection process.

12. It would not be out of context to make a reference to the G.R. dated 10/06/2022, issued by the State Government, by which the State Government has after referring to various earlier G.R's and the orders passed by this Court, at clause 2.2 therein made a reference to the newspapers recognized by the State Government for publication of such advertisements. Schedule "B" appended to the said G.R. dated 10/06/2022 makes a reference to the newspaper "Sakal". We are conscious of the fact that the appointment in the present case is of the year 2012, whereas the said G.R. is dated 10/6/2022. We have made reference to the said G.R. dated 10/06/2022, for the limited purpose to note that daily "Sakal" is found by the State Government as a newspaper having wide circulation.

13. In the facts and circumstances of the present case, we find that the Petitioner is in employment uninterruptedly since the year 2012, as stated on oath in the petition, which assertion is not rebutted by the Respondents. Disturbing the employment of the Petitioner who is in service for the last more than 10 years, from his appointment till passing of the impugned order, would not be justified and result in prejudice being caused to the Petitioner, more so, when we are satisfied that the advertisement issued by the Respondent Nos. 4 and 5 was in a newspaper having wide circulation, the advertisement containing the relevant details of the post advertised and the Petitioner being an eligible candidate, selected in the said selection process.

14. With reference to the ground of rejection No.3 in the impugned order, the same would not be a ground to deny the approval to the post of Laboratory Assistant which is admittedly to the post in the open / general category.

15. Though, we are inclined to allow the Petition and thereby set aside the impugned order, thereby directing the Respondent No. 3 to grant approval to the appointment of the Petitioner as a Laboratory Assistant, we hereby keep open the obligation of the

Respondent Nos. 4 and 5 to fill up the backlog of the Reserved Category, if any, while making future appointments. We have neither dealt nor considered the issue of the backlog vacancy in the Reserved category, in view of the peculiar facts of this case. The Respondent Nos. 4 and 5 would be obliged in terms of law to deal with the said aspect strictly in accordance with law.

16. For the reasons herein above, this Writ Petition is allowed. We set aside the impugned order and direct the Respondent No. 3 to grant approval to the appointment of the Petitioner on the post of Laboratory Assistant, in accordance with law, within a period of 30 days from today. The Respondent Nos. 4 and 5 are directed to pay costs of Rs. 50,000/- (Rupees Fifty Thousand only) by way of Demand Draft drawn in the name of Kirtikar Law Library, Bank A/c No. 000110110012632, Bank Name- Bank of India, Branch- Mumbai Main, IFSC Code-BKID0000001, within period of 30 days from today, failing which the Respondent No. 3 to take steps to recover the said amount from the Respondent Nos. 4 and 5, as arrears of land revenue.

17. The Respondent No. 3 is hereby directed to enter the name of the Petitioner in the Shalarth system and issue Shalarth Identity to the Petitioner, by strictly complying with law.

18. Rule is made absolute in the above terms.