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(1996) 02 BOM CK 0057

Bombay High Court

Case No: Writ Petitions No"s. 4727, 4927 of 1995, 217 and 218 of 1996

Hanmant Mahajan Thakur and Others	APPELLANT
Vs	
State of Maharashtra and Others	RESPONDENT

Date of Decision: Feb. 6, 1996

Citation: (1996) 3 BomCR 384 : (1996) 1 MhLj 859

Hon'ble Judges: V.K. Barde, J; N.P. Chapalgaonkar, J

Bench: Division Bench

Judgement

N.P. Chapalgaonker, J.
Heard Shri S.B. Talekar and Shri V.G. Sakolkar, Advocates for the petitioners; Smt. A.S. Rasal, S.K. Kadam, Shri S.S. Shinde and Shri P.B. Varale, Assistant Government Pleaders for the respondent-State and Regional Subordinate Services Selection Board; and Shri A.S. Golegaonkar and Shri E.P. Sawant, Advocates for the Zilla Parishads.

2. These are the petitions by Multipurpose Health Workers who have undergone training for 12 months period and thereafter were appointed by the Zilla Parishads as Multipurpose Health Workers for a period of 2 years. Since the petitioners" services are either terminated or likely to be terminated, they have approached this Court for quashing the termination order and for challenging the action of the Zilla Parishads.

3. Health Worker is a District Technical Service (Class III) (Health) Grade-III in the Zilla Parishad and the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967 prescribe that for the appointment in this cadre by nomination, the candidate should not have been more than 28 years of age, should have passed secondary school certificate examination with physics, chemistry or biology or general science as the subjects and must have successfully undergone 12 months training course for Multipurpose Health Workers. Therefore, 12 months basic training course for the Multipurpose Health Workers was one of the pre-requisite training for any candidate to be appointed as Health Worker.

We have used the nomenclature "Health Worker" since the parties have admitted before us that there is no separate post of Multipurpose Health Worker and the petitioners and other similarly situated persons appointed as Multipurpose Health Workers are covered by Item No. 3 as titled as "Health Worker" in Appendix VI to the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967. Some of the petitioners also claim that these posts have now been excluded from the purview of the Subordinate Services Selection Board so far as the Scheduled Castes and Scheduled Tribes candidates are concerned. We have gone through the relevant Government circulars and we find that since there was some backlog to be filled in these categories, the Government felt that if any post is to be filled in Class III or Class IV of the Zilla Parishad from the above referred reserved categories to fill in the backlog by a special drive, then for the purpose of such recruitment under that drive, the posts have been excluded from the purview of the Subordinate Selection Board. It is not that these posts are totally excluded merely because some candidate is Scheduled Caste or Scheduled Tribe. The Government circular clarifies that if the reserved post is to be filled in as per the 100 Point or 200 Point Roster as the case may be, then they will have to be recruited by normal procedure and are not excluded from the purview of the Services Selection Board. It is only when a special drive is taken to fill in the backlog of these categories, then only the recruitment through the Selection Board is not required.

4. Normally every person undergoing the training at the cost of State Government or any other employer, executes a bond that he will render service for a particular period after completion of the training to the said employer and if he fails to render services for that minimum period then he will indemnify the institution which has spent for the training. It appears that the various Zilla Parishads have misinterpreted this and started appointing every person who has successfully undergone the training for 2 years period and thereafter throw him out and appoint some other trained person. Needless to say that this practice will have to be deprecated. There is no obligation created by the bond, which we have seen, a copy of which is placed on record, for the Zilla Parishad to appoint any trained person. Whenever a post is available in the cadres governed by the Recruitment Rules of 1967, then those posts will have to be advertised and filled in by the Services Selection Board and the candidates who have successfully undergone the training will only be eligible to apply. Instead of following this procedure, the Zilla Parishad started appointing these persons as soon as they come from the training. This is not provided for by the Rules. We do not see any propriety in spending for the training of a person, sending him for training for a period of 12 months, appointing him for 2 years and thereafter remove him for making him to wander searching alternate job. This would create many unemployed persons who might be age barred because of this unreasonable approach of the employers.

5. This Court in Writ Petitions Nos. 3767/1994, 3768/1994, 3769/1994 and 2426/1995 considered the claim of similarly situated persons like petitioners and rejected their contention that they have right to continue in office. We also concur with the view taken in

the order of this Court dated 24-11-1995 and hold that the petitioners do not have any right to continue in office and reject their prayer in this respect.

6. Since the money from the public exchequer is spent on the petitioners for their training and they were employed for some period by the Zilla Parishads, we wish to give certain directions in respect of all similarly situated persons. The Supreme Court reminded the duty of the State and other employers where public money is spent for training, in the case of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, . In paragraph No. 11 of this judgment, the Supreme Court observed, thus :

"What is indeed required is to see that the nation gets the benefits of time, money and energy spent on the trainees which would be so when they are employed in preference to non-trained recruits. This would also meet the legitimate expectations of the trainees."

The Supreme Court further went on to lay down four principles in respect of the persons sent for special training at the State expenses. Those are as under :-

"(1) Other things, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. N. Hargopal would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

7. We feel that the similar directions are required in this case. Though petitioners are not entitled for continuation of the services, they are entitled to be considered for the recruitment. The Zilla Parishads should notify their requirement and get the posts advertised through the Services Selection Boards whenever they are in existence. If the posts are advertised, we direct that though upper age limit of 28 years is mentioned in the Recruitment Rules, it shall stand relaxed in favour of the candidates who have undergone the training at the Government expenses and have served either full time for two years period or part of it and were removed by the Zilla Parishads or are still in service of the Zilla Parishads. However, the candidate should not be more than 30 years of age when he was first appointed by any of the Zilla Parishads as Multipurpose Health Worker. We also direct that each Zilla Parishad will maintain a seniority list of the trained candidates who have undergone 12 months basic training course in Multipurpose Health Workers

and will fill in the posts which they wish to fill in the cadre of the Health Worker or Multipurpose Health Worker from the said list maintaining the seniority. Seniority shall be counted on the basis of the date of completion of the training and between the candidates who have completed the training course simultaneously, the seniority from the date of their appointment. If two persons are appointed on the same day, then the seniority will be determined on the basis of the age. We only hope that immediate steps will be taken in respect of the posts which the Zilla Parishads need to be filled in.

It is clarified that operation of the condition of Subordinate Services Selection Board in cases of certain areas is relaxed by State Government, the Government is free to make the appointments through alternate machinery as per its policy. Interim orders are vacated. Petitions disposed of.

8. Order accordingly.