
(2016) 02 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 6947 of 2015

Ganesh Murlidhar Chaudhari

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2017) 1 ALLMR 729 : (2016) 4 BCR 465 : (2016) 5 MhLJ 700

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Hemraj P. Kshirsagar, for the Appellant; A.G. Magre, for the Respondent

Final Decision : Disposed off

Judgement

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing.

2. The brief facts, necessary for deciding this Petition, are that, the petitioner is appointed as peon in the Village Panchayat at Nashirabad, Tq. & Dist. Jalgaon on 1st April, 1999 and since then he is serving on the said post for last more than 15 years. The Respondent No. 1 issued circular on 6th April, 2005 directing all the concern Zilla Parishads to reserve 10% quota of Class-III and Class-IV posts to the Village Panchayat employees in Zilla Parishad in direct recruitment process and to make available same to the employees of the village panchayat completing 10 years of their services, as per their qualification and giving age relaxation upto 45 of age. It is the case of the petitioner that, the representations were made by the petitioner initially on 11th February, 2011, and 6th April, 2011 to the Respondent No. 4, for including his name in the seniority list, but it was in vain, and finally the name was included in the seniority list on 22nd February, 2013, and due to the negligence of the respondents, the petitioner lose his opportunity in the year 2010, 2011 and 2012.

3. The Respondent No. 4 published the seniority list of the village panchayat

employees for the Jalgaon district on 3rd March, 2014, wherein the name of the petitioner is at Sr. No. 239 in the seniority list. However, the name of the petitioner was not included in the seniority list published in the year 2015 on the ground that, he has crossed 45 years age.

4. The learned counsel appearing for the petitioner submits that, the petitioner is deprived of getting appointment in the employment of Zilla Parishad from 10% reserve quota of village panchayat employees, due to not filling of the said posts by the respondents for the years together, and till attaining the age of 45 years by the petitioner. It is submitted that, some of the employees, who have crossed age of 45 years have been absorbed, however, in case of the present petitioner, the absorption is denied on the ground that, the petitioner has completed more than 45 years age. It is further submitted that, the petitioner's name is not included in the seniority list though the petitioner is serving with the Gram Panchayat, Nashirabad, Tq. & Dist. Jalgaon as peon from 1st April, 1999 and was eligible for inclusion of name in the seniority list in the year 2009.

The petitioner's name was not included in the seniority list from 2009 till 2012. The petitioner filed representations to the Respondent No. 4 on 11th February, 2011 and 6th April, 2011. Though the petitioner's name was included in the seniority list prepared for the year 2013 and 2014, inspite of the fact that, the posts were vacant, the Respondents have not absorbed the petitioner in Zilla Parishad services, and in the year 2015, the petitioner's claim was negatived on the ground that, the petitioner has completed 45 years of age. It is submitted that, the petitioner is fully qualified and also he is handicapped. If the petitioner's claim should have been considered in the year 2014, from the handicapped category, he would have been at Sr. Nos. 1 to 3, in the seniority list. It is further submitted that, the employees who have crossed 45 year of age, and appointed in Zilla Parishad in class-III cadre from village panchayat employees in the year 2007, their names were at Sr. nos. 4 and 6, and some other employees even though crossed age of 46, 47 and 48 year respectively they are appointed, as per the information sought from Respondent No. 4 by the petitioner.

The Respondent No. 4 has filed additional reply to para no. 13 of the Petition stating that, some employees appointed in the year 2007, in view of the fact that, they were held eligible in the year 2005 and 2006, and no appointment in that year were made and hence they were absorbed subsequently. The learned counsel appearing for the petitioner submitted that, the selection list prepared by the Respondent Authority shows that, the irregularities have been committed by the Respondent Authorities, and some of the employees were appointed even without showing their names and Serial numbers in the seniority list. Some of the employees have been absorbed by the Respondent; have crossed the age of 45 years, and some have crossed age of 46, 47 and 48 years also. It is submitted that, the employees at Sr. Nos. 21 and 23 of the seniority list have completed 47 years of age. Thereafter, the employees at Sr. Nos. 1, 2, 19, 22, 26, 28, 31, 32, 68 and 69 have completed their 47 years of age. Thereafter the

employee at Sr. No. 38 has completed 48 years of age. Therefore, the learned counsel appearing for the petitioner submitted that, the petitioner also entitled for absorption, but the respondent deleted his name from the seniority list in the year 2015.

5. The Respondent No. 4 has filed affidavit and additional affidavit in reply and denied the claim of the petitioner. It is stated that, since the petitioner has completed 45 years of age, his name has not been included in the seniority list prepared for the year 2015. By way of filing additional affidavit in reply, it is stated that, the names of Mr. Padmakar Bhika Patil and Mr. Lakhan Jagan Etawari were already in the list of the year 2005-2006. At that time, they have not completed age of 45 years and their names were under consideration for appointment as per the seniority list. The names of aforementioned two persons were included in the seniority list, which was published in the year 2007.

6. We have heard the learned counsel appearing for the petitioner, the learned counsel appearing for the Respondent No. 4, and the learned A.G.P. appearing for the Respondent -State. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, reply and additional reply filed by the Respondent No. 4.

7. In para no. 13 of the petition, it is stated thus :-

"13. The petitioner submits that, the information was sought from the respondent no. 4 as to whether certain employees of the village panchayat who have completed their 45 years of age, their services have been absorbed in employment of the Zilla Parishad as Class-III and it is learnt from the communication made by the office of the respondent no. 4 dated 4th October, 2014 that (Shri Padmakar Bhika Patil, shown in seniority list at Sr. No. 4 of 2007) and (Shri Lakhan Jagan Itwari, shown in seniority list at Sr. No. 6 of 2007) Ravindra Hiranman Kalpe and Rohidas Prema Jadhav, the above Employees have been given appointment, after completed 47 year of their age, on Sr. Nos. 1, 4, 68 and 69, Ravindra Hiranman Kalpe and Rohidas Prema Jadhav, even after completion of 45 years of their age, without showing their serial no. of seniority list appointed in 10% quota of Z.P."

8. Though by way of filing reply, the Respondent No. 4 has tried to justify the inclusion of names of Shri Padmakar Bhika Patil and Shri Lakhan Jagan Itwari stating that, at the relevant time, they did not cross age of 45 years, however, in respect of other employees namely Ravindra Hiranman Kalpe and Rohidas Prema Jadhav etc., whose names are mentioned in the aforementioned paragraph, alleging that, inspite of those employees crossed age of 45 years, their names have been included in the seniority list and they are absorbed in the employment of the Zilla Parishad, has not been specifically denied or answered by the Respondent No. 4. In similar set of facts in case of Dnyaneshwar Kisan Bari V/s The State of Maharashtra and others, in Writ Petition No. 1777 of 2011, decided on 23rd October, 2012, in paragraph no. 4, it is observed thus :-

"4. We have perused seniority list presented on record. On perusal of list, it transpires that name of petitioner finds place at sr. no. 417. Candidate at sr. no. 448 by name Sunil Pawar as well as candidate at sr. no. 526 by name Bapu More have been accommodated in Zilla Parishad thereby bypassing the claim of petitioner. A list of candidates who were in service of Panchayat Samiti and were absorbed in Zilla Parishad has also been placed on record. It has been pointed out that employees by name Subhash Patil, Kishor Pawar, Balu sonar, Suresh Patil, Mohansing Pardhi are some of the candidates who have crossed 45 years of age and have been absorbed in Zilla Parishad. On going through seniority list as well as orders of appointment issued in favour of various candidates from aforesaid category, we are convinced that claim of petitioner has been wrongfully denied. Petitioner has been discriminated in the matter of promotion by Zilla Parishad without there being any justifiable reason. Considering the facts and circumstances, there is no impediment for issuing direction as prayed for by petitioner. We, therefore, allow the petition and direct respondent no. 4 to issue order of absorption in class-III cadre in Zilla Parishad in favour of petitioner by granting relaxation of age as expeditiously as possible, preferably within a period of three months from today. Respondent/Zilla Parishad is also directed to settle the claim of petitioner in respect of his placement at appropriate place in the seniority list and shall also extend benefits pursuant to his placement in seniority list. Respondent/Zilla Parishad shall abide by directions within time stipulated above. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs."

9. In the present case also the learned counsel has pointed out various appointments made in the 10% category of the persons who had crossed 45 years of age. It is also a matter of record that, 10% posts were vacant since 2009, however, the Zilla Parishad did not fill in the posts. The petitioner at the relevant time was eligible to be considered for absorption in the said 10% posts in the Zilla Parishad.

10. The list is now published for considering appointments to be made in Zilla Parishad for 10% seats meant for Village Panchayat employees after lapse of six (6) years without including the name of the petitioner.

11. Considering the aforesaid aspect of the matter, we pass the following order :

a) The Respondent No. 3 shall list the petitioner at the proper place in the seniority list to be meant for absorption of the Village Panchayat employees in the Zilla Parishad for 10% posts reserved and shall extend the benefit as applicable expeditiously.

b) The Writ Petition is accordingly disposed of. No costs.