
(2016) 02 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 1274 of 2015

Mahadu

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Citation : (2016) 2 AIRBomR 264 : (2016) 2 ALLMR 389 : (2016) 2 BCR 255 :
(2016) 3 MhLJ 255

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

Bench : Division Bench

Advocate : Santosh B. Gastgar, Advocate, for the Appellant; U.H. Bhogle, AGP,
for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition takes exception to the impugned order dated 8th November, 2014, passed by the respondent No. 2 and further seeks direction to respondent No. 2 to issue appointment in favour of petitioner on the post of Parichar Class-IV [Peon] on the establishment of Zilla Parishad, Jalgaon, as selected candidate at serial No. 1 in waiting list, dated 9th July, 2012.

4. It is the case of the petitioner that, the petitioner applied for the appointment on the post of Parichar on the establishment of respondent No. 2 Zilla Parishad, Jalgaon, from the open Earthquake affected person category candidate. It is further the case of the petitioner that, the selection process was carried out, and the petitioner's name is included at serial No. 1 in waiting list, as per the selection list published on 9th July, 2012 by the respondent No. 2. According to the petitioner, he has right to get employment from the earthquake affected persons reserved category, as per the selection list in place of one Shri Balaji

Limbaji Yadav, whose appointment dated 07.02.2013 on the post of Parichar, was challenged by the petitioner, by filing Writ Petition No. 1074/2014 in the High Court. It is further the case of the petitioner that, in the said Writ Petition, it was pleaded by the petitioner that, aforementioned candidate has been appointed on the post of Parichar from the earthquake affected persons category, though certificate produced by him was not genuine and the same was fabricated. The said selected / appointed candidate namely Shri Balaji Limbaji Yadav realizing that, the certificate filed by him from the earthquake affected persons category is false and bogus, resigned from the post of Parichar on 23rd January, 2014. The petitioner has placed on record copies of appointment order and the resignation given by the said candidate.

5. It is further the case of the petitioner that, the petitioner is possessing requisite qualification of H.S.C. and his name is enrolled in the employment office as candidate of earthquake affected person category, and the Competent Authority i.e. Sub Divisional Officer, Latur, has issued certificate to that effect in favour of the petitioner on 1st August, 1998. The petitioner has placed on record copy of the said certificate. It is specific case of the petitioner that, said Shri Balaji Limbaji Yadav by producing false and bogus certificate that, he belongs to earthquake affected persons category, succeeded in getting appointment from open earthquake affected person category candidate, and deprived the petitioner, who is really from the said category. The respondent No. 2, without verifying the correctness of the documents / certificates produced by the said Shri Balaji Limbaji Yadav and also without taking any action against him, accepted his resignation which directly affected the interest of the petitioner, since the petitioner was first in waiting list. Since the certificate submitted by the said Shri Balaji Limbaji Yadav was not genuine, he should not have been appointed as Parichar and the petitioner, who stands at serial No. 1 in waiting list ought to have been appointed in place of Shri Balaji Limbaji Yadav. The representations filed the petitioner time to time have been rejected by the respondent No. 2, by passing the impugned order. Hence, this Writ Petition.

6. The learned counsel appearing for the petitioner submits that, said Shri Balaji Limbaji Yadav should not have been appointed by the respondent No. 2 from the earthquake affected persons reserved category, since the certificate produced by him was not genuine.

7. It is submitted that, when the petitioner raised grievance about the genuineness of the certificate of Shri Balaji Limbaji Yadav, realizing that said Shri Balaji Limbaji Yadav will have to face enquiry, he has resigned from the said post, and therefore, the petitioner ought to have been appointed in his place. It is submitted that, at the time of filing of this Petition, the petitioner's age was 39 Years, and now he has crossed the age of 40 Years, and therefore, the petitioner may not be eligible to participate in further selection process due to over age, since he has crossed the age of 40 years. Therefore, relying upon the pleadings in the Petition and annexure thereto, the learned counsel appearing for the

petitioner submits that, Petition deserves to be allowed.

8. On the other hand, the learned counsel appearing for the respondent No. 2, relying upon the averments in the affidavit-in-reply, submits that, advertisement was issued to fill up the vacant post on 1st January, 2011. The name of the petitioner was at serial No. 1 in the waiting list, as per the select list published on 9th July, 2012. The petitioner, in earlier Writ Petition i.e. Writ Petition No. 1074/2014, had challenged the selection and appointment of one Shri Balaji Limbaji Yadav. However, the said person resigned from his post on 1st March, 2014, and his resignation from the said post was accepted by the Zilla Parishad Administration. The High Court, vide order dated 11th August, 2014, gave liberty to the petitioner to move the Zilla Parishad and the respondent Zilla Parishad was directed to consider the prayer of the petitioner on its own merits.

9. It is submitted that, the representations given by the petitioner was considered, and the same was rejected by the impugned order. It is submitted that, as per the Government Resolution issued by the concerned Department dated 27th June, 2008, the waiting list lapses after period of one year. In the instant case, the waiting list was published on 9th July, 2012, and the same was lapsed on 8th July, 2013. In view of the same, the petitioner's prayer could not be granted. It is submitted that, while appointing Shri Balaji Limbaji Yadav, the particular roster point of the relevant reservation was considered and the same cannot be reconsidered or further used to accommodate the petitioner, and therefore, the learned counsel appearing for the respondent No. 2 submits that, Petition may be rejected.

10. We have given careful consideration to the submission of the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent -State and the learned counsel appearing for the respondent No. 2. With their able assistance, we have perused the pleadings in the Petition, annexure thereto, affidavit-in-reply filed by the respondent No. 2, and all other material placed on record. The facts, which are not in dispute are as under:

11. The petitioner did participate in the selection process initiated by the respondent No. 2 for the appointment on the post of Parichar Class-IV [Peon], which was advertised by the respondent No. 2. One Shri Balaji Limbaji Yadav also participated in the said selection process from the same category. The said Shri Balaji Limbaji Yadav was appointed from the earthquake affected persons category on the post of Parichar Class-IV [Peon]. The select list was published on 9th July, 2012, by the respondent No. 2. The petitioner's name was included in the waiting list at serial No. 1. The appointment order was issued in favour of Shri Balaji Limbaji Yadav on 7th February, 2013, and he resigned from the said post on 1st March, 2014. The petitioner is qualified for the said post, and therefore, his name was considered during the selection process and his name is included in the waiting list at serial No. 1.

12. The Registry has made available the original record of Writ Petition No.

1074/2014 for our perusal. The said Writ Petition was filed by the petitioner, seeking direction to cancel the appointment order dated 7th February, 2013, issued by the respondent No. 2 in favour of Balaji Limbaji Yadav on the post of Parichar Class-IV [Peon] at Animal Husbandry Hospital, Nagar Devla, Taluka Pachora, District Jalgaon, and there was further prayer, seeking directions to the respondents to appoint the petitioner on the post of Parichar Class-IV [Peon], as he is a selected candidate at serial No. 1 in the waiting list. Upon perusal of the pleadings in the said Writ Petition, there are specific pleadings to the effect that, Shri Balaji Limbaji Yadav produced false and bogus certificate of earthquake affected persons category, and from the said category, he was wrongly appointed, depriving the petitioner's claim for the said post, since the petitioner is at serial No. 1 in the waiting list and Shri Balaji Limbaji Yadav was last appointed candidate from the said category. In fact, in the said Writ Petition, by an interim order dated 11th February, 2014, this Court directed respondent No. 5, Tahsildar to cause inquiry in respect of certificate issued in favour of respondent No. 8, certifying that, he is an earthquake affected person, and submit his report to this Court. After passing the said order, it appears that, respondent No. 8, whose appointment was challenged, tendered resignation from the service. In view of the subsequent development, after passing the order dated 11th February, 2014, since respondent No. 8 resigned from service, the Petition came to be disposed of, giving liberty to the petitioner to approach Zilla Parishad so as to consider his claim for appointment on the post of Parichar [Class-IV], which became vacant on resignation tendered by Shri Balaji Limbaji Yadav. However, it appears that, the request of the petitioner to appoint him on the said post is turned down by the respondent No. 2 on the ground that, the wait list has to operate only for one year, and thereafter, appointment to the candidate from the wait list cannot be given, and such vacant post will have to be filled in after advertising the said post.

13. In fact, if the sequence of events from the date of publication of the select list is considered, on 9th July, 2012, list of selected candidates was published. The petitioner was shown at serial No. 1 in the waiting list. On 7 posts of Parichar Class-IV, in the establishment of the respondent No. 2, candidates from the earthquake affected persons category were appointed by the respondents. The said Shri Balaji Limbaji Yadav was at serial No. 7, and the petitioner's name was at serial No. 1 in the waiting list, meaning thereby, the petitioner stood at serial No. 8 from the aforementioned category. The appointment letter was issued in favour of said Shri Balaji Limbaji Yadav, on 7th February, 2013. It is the contention of the learned counsel appearing for the petitioner that, the petitioner came to know that, certificate, which was produced by Shri Balaji Limbaji Yadav that, he belongs to earthquake affected persons category, was not genuine. It is further the case of the petitioner that, he started collecting information and documents so as to take exception to the appointment of said Shri Balaji Limbaji Yadav. In the said process, time was consumed. However, the petitioner filed Writ Petition No. 1074/2014, on 17th January, 2014, taking exception to the

appointment of said Shri Balaji Limbaji Yadav. Therefore, if the sequence of the events is taken into consideration, the petitioner was diligent in taking exception to the appointment of said Shri Balaji Limbaji Yadav within one year from the date of his appointment. As already observed, since Shri Balaji Limbaji Yadav resigned from the said post, the legitimate expectation of the petitioner to get appointment on the said post cannot be said to be without any basis inasmuch as the petitioner stands at serial No. 1 in the waiting list. As already observed, at the time of filing of the present Writ Petition, the petitioner was 39 years of age, and by this time he has crossed age of 40 years, and therefore, he may not be eligible to participate in the further selection process.

14. In that view of the matter, in the peculiar facts and circumstances of this case, and keeping in view the object for which 7 posts were reserved for the candidates from the earthquake affected persons category, the Petition deserves to be allowed. The petitioner hails from the earthquake affected area. The petitioner is resident of Killari, Taluka Ausa, District Latur, which was epicenter of massive earthquake occurred in the Year 1993. Not only in our country, but whole world was astonished by intensity of the said massive earthquake of the Year 1993. In case, the petitioner is not granted relief as prayed for in the given fact situation, it would be travesty of justice.

Law should lean in favour of oppressed and weak class of the society and victims of natural calamity, which calamity is beyond the control of human being. Keeping in view the discussion in the foregoing paragraphs in the peculiar facts of this case, the equity lies in favour of the petitioner, and therefore, we should not be hesitant to invoke extra ordinary writ jurisdiction so as to grant equitable and discretionary relief in favour of the petitioner. It is not the case that, the post, for which the petitioner has applied, is an isolated post and extra ordinary skillful job which cannot be performed by the petitioner and more so when the petitioner has been selected in the selection process and he is at serial No. 1 in the waiting list.

15. Therefore, in the peculiar facts and circumstances of this case, for the reasons aforesaid, the impugned order / communication dated 8th November, 2014, passed by the respondent No. 2 stands quashed and set aside. The respondent No. 2, without raising grounds which are stated in the impugned order / communication and affidavit-in-reply, shall issue an appointment order in favour of the petitioner on the post of Parichar Class-IV [Peon], subject to completion of other procedural formalities, if any, as early as possible, however, within 6 weeks from today.

16. Rule is made absolute on above terms. The Petition is disposed of accordingly. Parties to act upon authenticated copy of this Judgment.