
(2016) 04 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 5028 of 2015

Pradeep

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2016) 4 AIRBomR 87 : (2017) 1 ALLMR 556 : (2017) 3 MhLJ 139 : (2016) 5 SLR 797

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. S.K. Mathpati, Advocate, for the Appellant; Mr. S.B. Yawalkar, AGP, Mr. Vijay Sharma, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—Heard.

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

3. By way of filing this Writ Petition, the petitioners have taken exception to the order dated 30th March, 2015, passed by respondent nos. 2 and 3. By the impugned order, the petitioners have been denied appointment to the post of trained graduate Cluster Chief. It appears from perusal of the impugned order that, the said order is passed without assigning any reasons. The impugned order only mentions "vik=a" B.Com.? [ineligible]. It further appears that, in case of petitioner no.2 there is no specific order but he has been orally told that, he is not eligible for the appointment to the said post. Petitioners also sought directions to the respondents to appoint them to the post of trained graduate Cluster Chief on the basis of the seniority list prepared by the Primary Section of Zilla Parishad, Jalgaon [at Exhibit-H Page 65] of the compilation of the Writ Petition.

4. The learned counsel appearing for the petitioners submits that without assigning any reason, the respondents have denied appointment to the petitioners to the post of trained graduate Cluster Chief. It is submitted that the petitioners are eligible to be appointed to the said post, since their names have been included in the seniority list, and also they possess requisite qualifications and have experience of teaching for more than 3 years. It is submitted that the petitioners have been appointed in eighties and they have rendered satisfactory services and working as In-charge Headmasters. It is submitted that both the petitioners belong to reserved category and keeping in view their length of service, the Government Resolutions dated 14th November, 1994 and 2nd February, 2010, and also the Circular dated 10th June, 2014, the petitioners ought to have been appointed to the post of trained graduate Cluster Chief. Therefore, relying upon the pleadings and grounds taken in the Petition as also the annexures thereto, the learned counsel appearing for the petitioners submits that, the Petition deserves to be allowed.

5. On the other hand, the learned counsel appearing for respondent nos. 2 and 3, relying upon the averments in the affidavit in reply submits that, the petitioners are Graduates in Commerce, which is not the subject for teaching in Zilla Parishad School, and therefore, in view of the Circular dated 10th June, 2014 issued by the Department of Rural Development and Water Conservation, the petitioners are not entitled for the appointment to the said post.

6. We have carefully considered the submissions of the learned counsel appearing for the petitioners, the learned AGP appearing for the respondent ? State, and the learned counsel appearing for respondent nos. 2 and 3. With their able assistance, we have perused grounds taken in the Petition, annexure thereto, and the reply filed by respondent nos.2 and 3. It appears that, respondent nos. 2 and 3 appointed some employees to the post of trained graduate Cluster Chief for 11 months on adhoc basis in the year 2015. Admittedly, the said period of 11 months is already over. The petitioners were considered for appointment on ad-hoc basis for the said post, however their candidature has been turned down without assigning any reason but by giving remark "vik=a" B.Com.? [ineligible]. The impugned order does not reflect application of mind by respondent nos. 2 and 3. The impugned order suffers from non application of mind.

7. The following facts are not in dispute:Petitioner no. 1 was initially appointed on 27th June, 1986 as an Assistant Teacher. He has completed postal D.Ed. and B.Ed. qualifications in the year 1995 and also obtained B.Com. degree even prior to the year 1995. Petitioner no.1 is promoted as Trained Graduate Teacher on 20th May, 2006, and also is working as an In-charge Headmaster since 1st April, 2015 at Nandra Primary School, Taluka Jamner, District Jalgaon. Petitioner no.1 belongs to S.T. category. Petitioner No.2 belongs to S.C. category. Petitioner no. 2 completed H.S.C. B.Com. qualification in the year 1984 and he was appointed as an Assistant Teacher on 28th August, 1984 at Primary School Lohara, Taluka

Pachora, District Jalgaon. He has completed Postal D.Ed. in the year 1992 and B.Ed. in the year 1999. The names of the petitioners have been included in the tentative seniority list prepared by the Education Section [Primary] Zilla Parishad, Jalgaon in the year 2015 for the purpose of considering their candidature for the appointment on the post of trained graduate Cluster Chief.

8. Therefore, it was incumbent upon the respondents to assign reasons while passing the impugned order thereby rejecting the claim of the petitioners to the said post. The petitioners have rendered more than 30 years of service and their names have been included in the seniority list. There is considerable force in the arguments of the learned counsel appearing for the petitioners that in view of the policy declared by the State Government since 1994 and since their names are included in the seniority list makes them eligible and entitled for the appointment to the said post. The respondents have not controverted the assertion of the petitioners that, the petitioners taught English subject in the said School upto 7th Standard. The policy laid down by the State Government is consistent in providing 30% reservation for the appointment to the said post by way of promotion. The petitioners' claim is from the promotional category. According to them, since they are working for more than 30 years as Assistant Teachers and their names have been included in the seniority list prepared by the respondent Zilla Parishad, they are eligible to be appointed to the post of trained graduate Cluster Chief.

9. In our opinion, the respondents ought to have considered the entire service career of the petitioners while considering their claim by way of promotion to the post of Trained Graduate Cluster Chief. It is difficult to understand as to why the petitioners, who have more than 30 years teaching experience to their credit and their names have been included in the seniority list, and they have also taught various subjects including English in their service career, cannot be considered for the said post. Since 11 months period of adhoc appointees has come to an end, we do not wish to elaborate our reasoning.

10. In the light of the discussion in the foregoing paragraphs, the impugned order cannot sustain. The same stands quashed and set aside. Respondent nos. 2 and 3 are directed to consider the claim of the petitioners afresh as in service candidates from promotion category for the academic year 2016-2017, keeping in view the discussion in the foregoing paragraphs. The respondents shall keep in view the length of service, that the petitioners belong to ST/SC reserved category, their names were already included in the seniority list on the basis of prevailing policy of the State Government and they taught English subject upto 7th Standard in their School, etc.

10A. Petition is partly allowed. Rule made absolute on the above terms. The Petition stands disposed of.