
(2016) 03 BOM CK 0115
In the Bombay High Court
Case No : Writ Petition No. 6254 of 2015

Rameshwar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 — Rule 6(10)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33, 47

Citation : (2016) 4 MhLJ 393

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : Mr. S.U. Nemade, Advocate, for the Appellant; Smt. P.D. Rane, A.G.P, Mr. M.I. Mourya, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

B.P. Dharmadhikari, J. (Oral) - Heard finally with consent of parties by issuing Rule and making it returnable forthwith.

1. Petitioner presently about 43 years old and a qualified Laboratory Technician in employment of respondent No.3 Zilla Parishad incurred disability (low vision) in 2010 while in employment. The extent of disability is 40%.

2. Proposal to shift the petitioner to a post equivalent in all respects i.e. Extension Officer (Panchayat) was mooted in 2010 and was submitted to State Government. Record shows that on 12th May, 2015 Office of the Divisional Commissioner, Amravati demanded certain clarification from respondent No.3 and it has been furnished on 19.10.2015. The respondent No.3 has pointed out that post of Extension Officer (Panchayat) in open category is lying vacant for direct recruitment. It is also pointed out that qualifications of petitioner are sufficient to enable him to occupy that post. The Chief Executive Officer has expressly mentioned that a post of Extension Officer (Agriculture), Extension Officer (Health) and Extension Officer (Education) cannot be given to petitioner,

as he lacks qualification.

3. It appears that the post actually fell vacant in March 2015. After the post fell vacant as permission from Government was taking time, the respondent No.3 Chief Executive Officer, in the interest of administration found it essential to proceed further with direct recruitment and issued public advertisement. The petitioner has at that juncture approached this Court. This Court has issued notice and granted rule on stay on 3rd December, 2015.

4. The petitioner continues to work on a subordinate post of Health Assistant and due to provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter referred to as, "1995 Act") his wages are protected.

5. Advocate Shri S.U. Nemade, in this background invites our attention to the provisions of Section 32, Section 33 and Section 47 of the 1995 Act and relies upon the judgment of the Hon'ble Apex Court, in the case of Kunal Singh v. Union of India and another, reported in AIR 2003 Supreme Court 1623, particularly paragraph 9 to urge that the post of Extension Officer (Panchayat) must be given to petitioner. He has also invited our attention to the provisions of Rule 6(10) of the Maharashtra Zilla Parishads District Services (Recruitment Rules) 1967.

6. Advocate Shri M.I. Mourya for respondent No.3 and 4 has opposed the petition. Only to demonstrate that there is no malice either in law or on facts, he pointed out that subject vacancy for the first time arose in March, 2015 and it was reasonably apparent that it could not be given to petitioner in near future. Considering the sensitive nature of post and nature of duties, respondent No.3 found it essential to fill up the vacancy promptly and, therefore, in public interest advertisement was issued. He submits that, however, simultaneously respondent No.3 has pointed out that post of Extension Officer (Statistics) is available and petitioner is qualified to occupy it. He states that if approval of Government is received, Zilla Parishad can give that post to petitioner.

7. Smt. P.D. Rane, learned A.G.P. submits that the proposal is under consideration of State Government and she is awaiting instructions.

8. Perusal of provisions mentioned (supra) clearly show that the petitioner cannot be thrown out of employment and his service needs to be protected. Accordingly, respondent Nos.3 and 4 have protected his service as also his wages, however, he is made to work on a inferior post of Health Assistant.

9. It is not in dispute that the petitioner is qualified to work as Extension Officer (Panchayat). Necessary compliances to seek approval of State Government are already made by respondent Nos.3 and 4. However, provisions of Section 47 of the 1995 Act are very clear and as per first proviso thereto, petitioner can be shifted to some other post with same pay scale and service benefits. Second proviso stipulates that when it is not possible to adjust employee against any

post, he needs to be kept on supernumerary post until a suitable post is available or he attain the age of superannuation, whichever happens earlier. Legislative mandate therefore, clearly reveals that till a suitable post becomes available, a supernumerary post is required to be created.

10. In this situation, we find that the correspondence undertaken by respondent Nos.3 and 4 with State Government was not at all necessary. Law obliges empower respondent Nos.3 and 4 to give to petitioner the proper post and this obligation cannot be defeated by approaching State Government in the matter.

11. Here provisions of Rule 6(10) of 1967 Rules (supra) needs to be looked into. Rule 6 is on appointment by nomination, promotion or transfer. As per sub-Rule 10, the Chief Executive Officer has been given an overriding power if application is made by any member on medical ground. In that event, he can with previous approval of Commissioner, transfer such member to other post in district services under the Zilla Parishad on such terms and conditions as may be specified by Commissioner. Chief Executive Officer cannot avoid and overlook even this obligation.

12. Perusal of Section 6 of the Maharashtra Land Revenue Code, 1966 and Section 272 of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 show that the Divisional Commissioner for Amravati Division is the Commissioner envisaged in this provision.

13. Therefore, in present matter respondent No. 3 Chief Executive Officer could have exercised there powers and transferred petitioner as Extension Officer (Panchayat). It was not necessary for him to await the decision of State Government in the matter. We find that for last more than five years, respondent Nos.3 and 4 have not cared to act in furtherance of there powers.

14. In this situation, we direct respondent No. 3 to submit appropriate proposal for absorbing/appointing petitioner as Extension Officer (Panchayat) to respondent No.2 Divisional Commissioner within a period of 4 weeks from today. The respondent No.2 Divisional Commissioner shall thereafter consider it in accordance with above mentioned Recruitment Rules and provisions of the 1995 Act and take suitable decision upon it within next eight weeks.

15. Till then, the respondent Nos. 3 and 4 shall not proceed to fill up existing vacancy in the post of Extension Officer (Panchayat).

16. Writ petition is thus partly allowed and disposed of. No costs.