

(2023) 07 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 793 Of 2021

Vishal

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

Citation : (2023) 07 BOM CK 0011

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Anirudha A. Nimbalkar, S. K. Tambe, V.R. Dhorde, Vijay B. Jagtap

Final Decision : Partly Allowed

Judgement

Shailesh P. Brahme, J

1. Heard the learned Counsel for the respective parties. Rule. Rule is made returnable forthwith. The learned AGP and learned advocates for the respondents waive service. With their consent, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the communication dated 16.09.2020 issued by the respondent no.2/ Divisional Joint Registrar, Co-operative Societies, Nashik, which is at Exhibit-V and the appointment order issued in favour of the respondent no.5. He is also seeking direction to reconsider his claim for appointment to the post in question and to initiate disciplinary action against the erring party.

3. Few acts are undisputed which are relevant to be mentioned.

(i) The respondent no.4 had engaged an agency for the recruitment of various post of Junior Officer, Clerk and others. Advertisement was issued on 10.06.2017 in various news papers. The applications for the post in question were to be submitted online. An official website was provided by clause no.10.

(ii) The petitioner and the respondent no.5 had applied for the post of Junior Officer. The petitioner claims to be more meritorious than respondent no.5.

(iii) The respondent no.5 was appointed to the post of Junior Officer.

(iv) The respondent no.2/Divisional Joint Registrar conducted enquiry and cancelled selection process on 28.02.2018. Against that Writ petition nos. 8811/2018, 2666/2018, 2671/2018, 2689/2018 and others were filed in the High Court. Those petitions were disposed of by common judgment and order dated 05.04.2019.

(v) The petitioner was persuading the respondents for providing updates of the selection process. He made complaints which were enquired into by the District Deputy Registrar and a report was submitted.

4. The petitioner belongs to a scheduled tribe and was holding a caste validity certificate. He was also staking his claim from the quota of projected affected person. He applied for the post of Junior Officer online. He successfully cleared the written examination. He was placed in the merit list above the respondent no.5.

5. After undertaking the process of selection, complaints were made to the respondents alleging lack of transparency and illegality. A Committee was appointed to enquire into the allegations. A report was submitted to the respondent no.2. By order dated 28.02.2018, the respondent no.2 cancelled the selection process. As stated earlier, writ petitions were filed. Those were partly allowed and the decision dated 28.02.2018 was partly set aside. The selection of 36 candidates for the post of Junior Officer and 28 candidates for the post of Clerk was upheld as stated in the operative part of the order.

6. The petitioner was continuously making correspondence with the respondent no.4/Bank to know the further progress. According to him, the official website was closed. He did not receive any correspondence either on his mail or through post on his address. He was all the while waiting for the appointment order because he was topping the merit list. He learnt about the selection process and the decision of the High Court first time through a news item.

7. The petitioner made complaints on 14.02.2020 and 22.04.2020 for conducting enquiry for not issuing appointment order. The cognizance was taken by the Competent Authority and an enquiry was directed. The respondent no.3 submitted the report which is produced on record at Exhibit-Q. It was stated that no record was produced to show the dispatching of the appointment orders to the selected candidates.

8. It was the contention of the bank that the appointment orders were dispatched through ordinary post. The appointment order was dispatched on 28.04.2019 and the petitioner did not report till 15.04.2019. It was further recorded that respondent no.5 was appointed because petitioner did not respond.

9. The report of the respondent no.3 was submitted to the respondent no.2. The report was accepted. The petitioner was given liberty to approach Court of law and his complaint was ultimately closed. The intimation given by the respondent no.2 vide letter dated 16.09.2020 is under challenge.

10. The respondent no.2 and 4 contest the petition on various counts. They claim that due procedure was followed in appointing the respondent no.5. All the selected candidates, who were to be appointed were issued appointment orders through post. The appointment orders were received and the respective selected candidates joined the duties. The petitioner alone has been making the allegation. The respondent no.5 has already joined the services in view of appointment order dated 03.06.2019. The complaints were made by the petitioner belatedly. He was aware of the appointment orders but still he did not report the duties. All other allegations have been denied by the respondent no.4/Bank.

11. It is contended by the respondent no.2 and 4 that the petition is founded on a vague and absurd plea. The petitioner is not vigilant. The appointment orders were posted to 314 candidates. Out of them, 280 joined the duties. For remaining 96 posts, further appointment letters were issued. Alongwith affidavit-in-reply the documents at Exhibit-R-I, R-II and R-III are placed on record to show that appointment orders were dispatched by ordinary post to the respective candidate.

12. The respondent no.5 adopts the submissions of the respondent no.4/bank. He contends that he was already selected for the post of Clerk. He was issued appointment order dated 03.06.2019 being next in the waiting list. He joined the post of Junior Officer. Alternatively it is contended by him that if in case this Court allows the petition, instead of terminating his services, he may be relegated to the post of Clerk.

13. We find that the respondents have not produced any material to show that an appointment order dated 30.04.2019 dispatched to the petitioner was actually served upon him. The respondents were duty bound to produce on record the material to show due service of appointment order upon the petitioner.

14. Pertinently, when the respondent no.3 conducted enquiry into allegation of the petitioner and submitted his report dated 04.09.2020 which is at Exhibit-Q page no.132, it was recorded that the bank did not produce the relevant record to show that the due procedure was adopted by the Bank for serving the appointment order. This factual aspect was not even considered by the respondent no.2/Divisional Joint Registrar. The impugned communication dated 16.09.2014 is vague and did not deal with this aspect of the matter.

15. The communication dated 16.05.2019 issued by Taluka Development Officer Rahata, referring to five candidates including the petitioner who had failed to join the services does not take the matter further. The extracts of the register, which is at page no.197 shows over writing in the column of dates. Interestingly, the

four other candidates who failed to join the services and similarly situated do not figure. Therefore, we find substance in the contention of the petitioner that there is no transparency in the selection of the respondent no.5. No convincing material was produced by the bank which was within its custody to justify the appointment of respondent no.5.

16. The internal correspondence by the branch officer, Sakuri with the head office and Taluka Development Officer at Rahata with the head office is of not much help. We therefore, hold that material irregularity was committed by the Bank. There is element of arbitrariness in casting aside the claim of the petitioner and appointing the respondent no.5.

17. Besides that there is no reason for the petitioner for not reporting the services despite service of appointment order. The petitioner was in need of job. He was persuading the respondents to know the updates after his name appeared in the select list. He was to gain nothing by not joining the duties.

18. It is submitted by the petitioner that clause no.10 of the advertisement shows that correspondence was to be made online on official website. However, the respondents adopted mode of ordinary post for sending appointment orders. We fail to understand why the compliance of clause no.10 was deviated. Instead of serving the candidates online from the official website, there was no reason to serve them by ordinary post. There is reason to believe that the website of the respondent no.4/Bank was closed and no information was supplied to petitioner from the said website.

19. The submission of the respondent no.4/Bank that other candidates did not complain regarding mode of service of appointment orders and only petitioner had complained, do not appeal to logic. Submission of the respondents about the pleadings in paragraph nos.13,14 and 15 of the petition memo, has also no merit.

20. For the reasons stated above, we are inclined to allow this petition. The respondent no. 5 was earlier selected for the post of Clerk and he had joined his duties also. The learned Advocate submitted that there is vacancy in that cadre which is not controverted on behalf of the bank. We therefore expect the respondent no.4/Bank to take appropriate decision for repatriating him to the earlier post, instead of throwing him out of the employment.

21. The writ petition is therefore partly allowed in following terms.

i. The communication dated 16.09.2020 issued by the respondent no.2, which is at Exhibit-V is quashed and set aside.

ii. The respondent no.4/Bank shall issue appointment order in favour of the petitioner for the post of Junior Officer by cancelling the appointment of the respondent no.5.

iii. The respondent no.4/Bank shall consider the claim of respondent no.5 for the post of Clerk.

iv. No order as to costs.