



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 25 OF 2024**

Siddharth Iswar Motghare
Aged about : 22 Years, Occu : Service; R/o
Hiwara, Post - Zadsi, Tahsil – Seloo, District
Wardha.

... **PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Secretary, Rural Development
Department, Mantralaya, Mumbai.
2. The Chief Executive Officer
Zilla Parishad, Civil Lines, Wardha.
3. The Block Development Officer
Panchayat Samittee, Seloo, District Wardha.
4. Grampanchayat Secretary,
Grampanchayat, Antargaon, Tahsil Seloo,
District Wardha.
5. Sarpanch,
Grampanchayat, Antargaon
Tahsil Seloo, District Wardha.
6. Prashant Arun Halde
Aged about 36 Years, R/o Antargaon, Tahsil
Seloo, District Wardha.

... **RESPONDENTS**

Mr. J. R. Kidilay, Advocate for Petitioner.
Mr. D. R. Bhoyar, Advocate for Respondent Nos.2 & 3.
Mr. K. J. Topale, Advocate for Respondent No.6.
Mr. A. R. Wagh, Advocate for Respondent Nos.4 & 5.
Mr. S. B. Bissa, AGP for Respondent No.1.

CORAM : SMT. M. S. JAWALKAR AND
PRAVIN S. PATIL, JJ.

ARGUMENTS HEARD ON : JULY 31, 2025.
PRONOUNCED ON : AUGUST 07, 2025.

JUDGMENT [PER PRAVIN S. PATIL, J.]

. Heard. **Rule.** Rule made returnable forthwith. By consent of the parties, Petition is taken up for final hearing at the stage of admission.

2. By the present Petition, Petitioner takes exception to the order dated 22/12/2023, by which, the Respondent No.2/Chief Executive Officer, Zilla Parishad, Wardha cancelled the recruitment exercise for the post of Peon undertaken by the Respondent Nos.4 and 5/Grampanchayat, Antargaon in the year 2022. The Petitioner seeks indulgence of this Court to redress his grievance.

3. It is the case of the Petitioner that Respondent Nos.4 and 5 issued the public notice for the post of Peon in Grampanchayat, Antargaon, Tahsil Seloo, District Wardha. As per the advertisement, the post of Peon was shown from open category and requisite qualification for the post was 7th standard pass and have knowledge of computer and other factors. In the advertisement, the criteria of age limit was between eighteen to thirty years and for

SC/ST/OBC category three years were relaxed. Accordingly, for reserved category the age limit was thirty-three years.

4. The Petitioner stated that his date of birth being 1/1/2002 and he belongs to Caste of Mahar, applied for the post of Peon. According to him, when he applied for the said post, he was twenty years of age. In the same manner, the Respondent No.6 also applied for the post of Peon in pursuance of advertisement and at the time of filing application considering his date of birth as 21/4/1988, he was thirty-three years and eight months old.

5. That in the recruitment exercise total eleven candidates had participated including the Petitioner and Respondent No.6. Accordingly, in the recruitment exercise written examination was also conducted and comparative chart of the candidates appeared for the post was prepared by the Respondent Nos.4 and 5. As per the said chart, Respondent No.6 secured 84 marks out of 100, whereas Petitioner has secured 64 marks out of 100.

6. That during the recruitment exercise, there were certain complaints made by the villagers to the Block Development Officer, and therefore, considering the said objections the Block Development Officer, accordingly by telephonic message directed to stay recruitment exercise. In

pursuance of the same, the Grampanchayat by its resolution dated 28/2/2022, stopped the recruitment exercise for the post of Peon. Subsequently, the stay granted by the Block Development Officer was vacated by the Respondent No.2 and Grampanchayat was directed to continue the recruitment exercise for the post of Peon vide communication dated 31/5/2022.

7. It is pertinent to note that after conducting the written examination and the chart prepared by the Grampanchayat, the candidates were called for verification of their documents. At the time of verification of the documents, Respondent Nos.4 and 5 found that there is variation of date of birth of Respondent No.6 in the document of School Leaving Certificate. Accordingly, explanation was sought from him about the said variation. However, Respondent No.6 failed to submit reliable and authentic School Leaving Certificate, and therefore, Grampanchayat in its meeting dated 7/6/2022 decided to appoint the next candidate as per the merit list i.e. Petitioner against the post of Peon.

8. In pursuance of the resolution of the Grampanchayat, Petitioner came to be appointed vide appointment order dated 7/6/2022, initially for a period of six months on contract basis. The Petitioner has successfully completed six months' period against the post of Peon. Therefore, considering

his satisfactory work, the Respondent Nos.4 and 5, vide its resolution dated 8/2/2023, confirmed his services against the post of Peon.

9. That in the present matter, near about more than one year Respondent No.6 raised his grievance before the Member of Parliament alleging that appointment of the Petitioner against the post of Peon is illegal, as Respondent No.6 though received more marks, his claim was not considered.

10. On the complaint of the Respondent No.6 dated 17/8/2023, which according to him, copy was served to the Respondent No.2 also, hearing was conducted in the matter by Respondent No.2 on 15/12/2023. The Respondent No.2, by the impugned order, quashed and set aside the recruitment exercise undertaken by the Grampanchayat by relying upon one Government Resolution dated 25/4/2016. According to the Respondent No.2, the State Government has provided the age limit for open category candidate up to thirty-eight years and for reserved category forty-three years. However, the advertisement/public notice issued by the Grampanchayat is contrary to the Government Resolution dated 25/4/2016. Hence, on this count, entire recruitment exercise was set aside and directed to start the recruitment exercise afresh.

11. The Petitioner, whose appointment has been cancelled due to the impugned order of Respondent No.2, approached before this Court and raised a grievance that though he is not at fault in the entire recruitment process, but because of impugned order his services are likely to be terminated. Hence, this Court by the order dated 3/1/2024 granted *status quo* as regards his services. The said *status quo* is yet till date in operation.

12. It is pertinent to note that though this Court has granted order of *status quo*, the Respondent Nos.4 and 5 refused to continue the services of Petitioner on the post of Peon on the ground that his services are already terminated before issuing order of *status quo* by this Court. In the light of this subsequent event, Petitioner moved Civil Application No. 604/2024 to issue appropriate directions to the Respondents. It is pointed out that after granting order of *status quo* Petitioner approached to join the services, but Respondent Nos.4 and 5 by preparing a back-date order made a show that services of the Petitioner are already terminated. He has pointed out that though the order of termination is dated 3/1/2024 i.e. date on which this Court passed order of *status quo*, same was issued by Registered Post dated 4/1/2024, hence, it is his submission that in view of *status quo* order, he is entitle for continuity of

service and the Respondent Nos.4 and 5 are responsible for not joining him on the post of Peon.

13. In the present Petition, the Respondent Nos.2 and 3 strongly opposed the Petition. It is their contention that Respondent Nos.4 and 5 have not followed the procedure, more particularly, Rule 4-A of the Bombay Village Panchayats Servants (Recruitment and Conditions of Service) Rules, 1960 (*for short, 'the Rules, 1960'*). It is stated that as per this Rule, upper and lower age limits for appointment of panchayat servant is prescribed. Accordingly, lower age limit as eighteen years and upper age limit as thirty-eight years for reserved category and twenty-eight years for open category on the date of appointment. They further relied upon the proviso of the said Rule, which provides that where the candidate has experience and possesses academic qualification, the Block Development Officer, by recording the reasons in writing can relax the upper age limit up to thirty-five years, if the candidate belongs to a Scheduled Castes. But, in the advertisement this Rule is not strictly followed and hence the entire recruitment exercise is illegal.

14. The Respondent No.6 also appeared in the matter and filed his affidavit stating therein that in his application and the School Leaving Certificate there was no overwriting nor any striking, as stated in the

resolution of the Grampanchayat. He further stated that once he was allowed to participate in the recruitment exercise and found to be the successful candidate by obtaining more marks than Petitioner, ought to have been appointed by the Grampanchayat. He further stated that under the proviso of Rule 4-A of the Rules, 1960, there are powers of relaxation of age, and accordingly, by relaxing his age he should have been appointed on the post of Peon.

15. In the background of aforesaid submissions made by the learned respective Counsel, we have perused the record as well as the case laws pointed out by both the parties in the matter.

16. At the outset, it is stated that in the present Petition the Respondent No.2, while quashing the recruitment exercise undertaken by the Respondent Nos.4 and 5/Grampanchayat, Antargaon, relied upon the Government Resolution dated 25/4/2016. It is rightly pointed out by the Petitioner that the Government Resolution dated 25/4/2016 was issued by the General Administration Department of State Government in respect of Government employees. The employees of Grampanchayat are not the State Government employees, and therefore, the said Government Resolution cannot be made applicable for the recruitment of Grampanchayat. According to him,

the services of Grampanchayat employee are governed by the Bombay Village Panchayats Servants (Recruitment and Conditions of Service) Rules, 1960. The Petitioner has further relied upon the Judgment of this Court in the case of ***Maharashtra Rajya Grampanchayat Karmachari Mahasangh & Anr. V/s The Secretary, Rural Development Department & Anr.***¹, wherein the issue of pay parity was involved and this Court has held that the claim of Grampanchayat employees to grant parity in pay with the Government employees or employees of Zilla Parishad and Municipal Council is not permissible, as there exists no similarity in the nature of work and recruitment process of employees of village panchayat. Considering the submission of Petitioner, the reliance of Respondent No.2 on the Government Resolution is *prima facie* illegal and consequently the impugned order is not sustainable in the eyes of law.

17. It is further pertinent to note that the learned Counsel appearing for Respondent No.2 fairly conceded that the Government Resolution dated 25/4/2016 is not applicable to the employees of Grampanchayat. Therefore, the very base of the order being defective, the impugned order is not sustainable in the eyes of law.

18. In the present matter, it is admitted fact that appointment of the

¹ 2015(2) ALL MR 348

Petitioner on the post of Peon was made on 7/6/2022 and same was confirmed by the resolution of Grampanchayat dated 8/2/2023. However, Respondent No.6 first time raised grievance against the appointment of Petitioner on 17/8/2023 i.e. after a period of 1½ years after the recruitment of Petitioner. The Respondent No.6 failed to explain as to why there was a delay on his part to challenge the appointment of Petitioner in the matter. At the time of argument, he orally stated that he was prosecuting his cause to the various authorities, and therefore, hearing was taken up by the Respondent No.2 in the matter. However, as nothing is placed on record in support of said submission, we are not satisfied with the explanation of delay given by the Respondent No.6 in absence of any documentary proof on record.

19. It is well settled position of law that once the candidate participated in the recruitment exercise and being unsuccessful, cannot challenge the selection process on the ground that the criteria laid down in the recruitment exercise was not legal. In this regard, the Hon'ble Supreme Court in the cases of *Madan Lal & Ors. V/s the State of Jammu and Kashmir & Ors.*² and *Dhananjay Malik & Ors. V/s State of Uttaranchal & Ors.*³ held that when the candidate appear in the recruitment exercise and found to be unsuccessful

² 1995(3) SCC 486

³ 2008 AIR SCW 2158

in the same, in that case, only because the result was against him of non-selection, subsequently cannot state that process of recruitment was unfair or the selection was not done properly in the recruitment exercise.

In the present Petition, admittedly the Respondent No.6 had participated in the recruitment exercise, though he was aware that at the time of submitting the application he was having the age of thirty-three years and eight months. Therefore, once he has participated in the recruitment exercise, knowingly well that he is age barred as per condition stipulated in public notice, now cannot challenge the recruitment on the ground that his candidature should have been considered by exercising the discretionary powers to relax his age limit. Hence, we are of the opinion that Respondent No.6 being overage at the time of appointment, and further he failed to furnish the documents to clarify the variation in his School Leaving Certificate, which were asked by the Grampanchayat at the time of appointment, cannot challenge the recruitment exercise after a period of 1½ years, and more particularly, when the services of the Petitioner are confirmed against the post of Peon.

20. It is well settled position of law that Respondent cannot be permitted to supplement the grounds to justify the order under challenge. But

even then we have considered the ground as same is raised on legal provision. The Respondents have strongly relied upon the Rule 4-A of the Rules, 1960 which is reproduced as under :

“4-A. Upper and lower age limits for appointment of panchayat servant. – No person shall be appointed as a panchayat servant if he is less than eighteen years of age or, more than [thirty three years] of age in the case of a person belonging to a [Scheduled Caste converted to Buddhism, Scheduled Tribe, Nomadic Tribe or Vimukta Jati] or to any class of citizens declared by the State Government [from time to time to be other backward class] more than [twenty eight years] of age in any other case, on the date of his appointment :

Provided that, where the candidate has experience and possess academic qualification, the Block Development Officer may for reasons to be recorded in writing relax the upper age limit up to thirty-five years, if the candidate belongs to a Scheduled Caste, [Scheduled Caste converted to Buddhism] Scheduled Tribe, Nomadic Tribe or Vimukta Jati or other Backward Class and upto thirty years if he belongs to any other class.

Explanation. – For the purpose of this rule, ‘Academic qualification’. -

(i) *In relation to a candidate for any class III post, means a certificate of having passed a final examination conducted by a Division Board established under the [Maharashtra secondary and Higher Secondary Education Boards Act, 1965 (Mah. XLI of 1965) or, any other qualification which the State Government may declare to be equivalent to the aforesaid certificate, and*

(ii) In relation to candidate for any class IV post, means a certificate issued by the Commissioner, Bureau of Government Examinations of having passed the Primary School Certificate Examination, or the Vernacular VII Standard Examination [or a School Leaving Certificate issued by the authority of a recognised Primary School of having passed the Standard VII examination.]”

21. According to us, as per Rule 4-A, the panchayat servant at the time of appointment should not be less than eighteen years of age and not more than thirty-three years of age in the case of person belonging to a reserved category and not more than twenty-eight years of age in any other case on the date of appointment. The proviso of this Rule came into operation only in the case where the candidate has experience and possessed academic qualification, which is required for the post, the Block Development Officer by recording the reasons can relax the upper age limit up to thirty-five years. However, for the post of Peon, there is no requirement of any experience and further academic qualification, therefore, considering the nature of post, there was no reason to invoke discretionary powers. Hence, the upper age limit at the time of appointment is required to be considered for general candidate up to twenty-eight years and for reserved category upper age limit up to thirty-three years.

22. In the present case, admittedly, the Respondent No.6 was having

age of thirty-three years and eight months at the time of appointment. This fact candidly admitted by the Respondent No.6 in his affidavit dated 8/4/2024 in paragraph No.5. Therefore, we are of the opinion that Respondent Nos.4 and 5 has rightly considered the candidature of Petitioner at the time of appointment.

23. It is the submission of Respondent that in the advertisement there is ambiguity, because in the public notice it was stated that post of Peon is for open category candidate and secondly while prescribing the age limit, same was not mentioned as per Rule 4-A of the Rules, 1960. But the fact remains that Petitioner at the time of appointment was of the age of twenty years old, whereas Respondent No.6 was of thirty-three years and eight months old. The Petitioner, in this regard, has rightly relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Employees' State Insurance Corporation V/s Union of India and Others***⁴, wherein in paragraph No. 20 the Hon'ble Supreme Court has observed thus :

“20. The advertisements issued by the appellant mentioned that the DACP Scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service

4 (2022) 11 Supreme Court Cases 392

regulations, the latter shall prevail. In Malik Mazhar Sultan V. U. P. Public Service Commission (“Malik Mazhar Sultan”) a two-Judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U. P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U. P. Public Service Commission and held : (SCC p. 512, para 21)

“ 21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

24. Here in the present case, we find that as per Rule 4-A of Rules, 1960, the appointment of the Petitioner was made, and therefore, though there is an ambiguity in the advertisement, same cannot be a reason to set aside the entire recruitment exercise.

25. The Respondent No.6 has relied upon the Judgment of Hon’ble

Supreme Court of India in the case of *Krishna Rai (dead) through Legal Representatives and Others V/s Banaras Hindu University through Registrar and Others*⁵ to state that where the law requires something to be done in the particular manner and if it is not done in that manner, it would have no existence in law. We do agree with this proposition, but Respondent No.6 failed to demonstrate which is the provision in his favour, which mandates something to be done in particular manner and Grampanchayat failed to do so in that manner. Hence, according to us, this Judgment of Hon'ble Supreme Court of India is not helpful to the Petitioner.

26. The further Judgment relied upon by the Respondent No.6 is in the case of *Ramjit Singh Kardam and Others V/s Sanjeev Kumar and Others*⁶, wherein the Hon'ble Supreme Court of India has held that the candidate who participated in the selection process can also challenge the recruitment exercise, when in absence of any criteria being published, candidates were selected on the basis of criteria published for the first time along with the final result. However, in the present case, it is not the case of Petitioner that after entering into the recruitment exercise, criteria has been changed by the

⁵ (2022) 8 Supreme Court Cases 713

⁶ (2020) 20 Supreme Court Cases 209

Respondent Nos.4 and 5. Therefore, we are of the opinion that Judgment relied upon by the Respondent No.6 is not applicable in the matter.

27. The Respondent Nos.4 and 5, who had appointed the Petitioner by its resolution, seems to have turned around because of change of guard of the Grampanchayat. We are of the opinion that the Grampanchayat being a local authority, any previous decision/resolution cannot be allowed to cancel only because body representing the Grampanchayat has been changed. If this is allowed, then there will be a chaos in the administration of the Grampanchayat which will be against the object and purpose for which Panchayat are established. It is stated that there is a procedure incorporated under the provisions of law, if the subsequent body found resolutions passed by the earlier body of the Grampanchayat are false or fabricated, then they have to take proper recourse and then only they can make submissions contrary to the record. However, in the present case, we do not find that Respondent Nos.4 and 5 appearing in the present matter has taken such recourse in the matter. Therefore, their submission cannot be accepted in the matter. Hence, for the aforesaid reasons we are of the opinion that the appointment of the Petitioner on the post of Peon is legal and valid and same

cannot be set aside and consequently the impugned order dated 22/12/2023 passed by the Respondent No.2/Chief Executive Officer, Zilla Parishad, Wardha is liable to be quashed and set aside.

28. It is made clear that impugned termination order dated 3/1/2024 issued by the Respondent Nos.4 and 5 to the Petitioner during the pendency of Petition is also illegal and Petitioner, whose services are protected by the interim order of this Court is required to be considered and accordingly Petitioner is entitled for the benefit of continuity of service. Hence, we pass the following order.

ORDER

1. Writ Petition is allowed.
2. The impugned order dated 22/12/2023 passed by the Respondent No.2/Chief Executive Officer, Zilla Parishad, Wardha is hereby quashed and set aside.
3. The termination order dated 3/1/2024 issued by the Respondent Nos.4 and 5 to the Petitioner is hereby quashed and set aside.
4. It is hereby declared that the appointment of the Petitioner against the

post of Peon being legal, he is entitled to continue on the post of Peon in terms of resolution of the Grampanchayat dated 8/2/2023 with all consequential benefits of service.

5. Respondent Nos.4 and 5/Grampanchayat is hereby directed to reinstate the Petitioner against the post of Peon with all consequential benefits of service within a period of one month after production of this order before it by the Petitioner.

6. Rule is made absolute in above terms. No order as to costs.

29. Since the Writ Petition is disposed of, pending Civil Application (CAW) Nos. 604/2024 and 1493/2025 do not survive. The same stand disposed of accordingly.

[PRAVIN S. PATIL, J.]

[SMT. M. S. JAWALKAR, J.]