

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2146 OF 2000

Md. Naser Ahmed Khan  
s/o Md. Ghaous Khan  
Age 33 years, Occ. Service  
R/o. Yousuf Colony,  
Parbhani

...Petitioner

versus

1. The State of Maharashtra,  
Through the Secretary  
School Education Department,  
(Copy to be served to the  
Government Pleader)  
Government of Maharashtra  
Mantralaya, Mumbai-32.
2. The Director of Education  
Maharashtra State,  
Central Building, Pune-1.
3. The Regional Deputy Director  
of Education, Marathwada  
Region, Aurangabad.
4. The Education Officer (Primary)  
Zilla Parishad, Parbhani.
5. The Management Faiz-ul-uloom  
Education Society, Postman  
Colony, Parbhani.  
Through its Secretary.
6. The Faiz-ul-uloom Primary School  
Through the Head Master.  
...Respondents

.....

Dr. Shrikant Patil, Advocate for the petitioner  
Shri S.B. Pulkundwar, A.G.P. for respondent Nos. 1 to 3  
Mr. D.A. Karnik h/f Mr. Vivek Dhage, Advocate for R. Nos. 5 and 6

.....

**CORAM : A. V. NIRGUDE AND  
V. K. JADHAV, JJ.**

**DATED : 26<sup>th</sup> FEBRUARY, 2015**

**ORAL JUDGMENT (PER A.V. NIRGUDE, J.) :-**

1. The petitioner was appointed as a clerk in respondent No.6 private aided primary school on 15.7.1992. A proposal for sanction of his appointment was sent and was granted. The petitioner therefore, started receiving salary from the funds allotted to the salary grants. On 21.7.1998, the Education Officer (Primary), Zilla Parishad, Parbhani, informed to the management of school that he had accorded approval for the appointment of petitioner by mistake. He said that he had no authority to grant such approval. He therefore, withdrew the approval for appointment of the petitioner w.e.f. August, 1998. He also mentioned in his letter that the recruitment of non teaching staff in private aided primary school was prohibited till 1.8.1995, thereby suggesting that when approval was granted in 1992 it was unauthorized one. He suggested that the management was at liberty to make application for approval of petitioner's appointment.

2. The petitioner approached this Court and at interim stage, this Court on 18.6.2001 directed the respondents to pay salary to the

petitioner till disposal of petition. The question is, whether decision of the Education Officer withdrawing approval for appointment of the petitioner was lawful and justifiable? In addition to letter dated 21.7.1998, the respondents placed reliance on the sworn affidavit of the Officer working in the office of Deputy Director of Education. He said that decision of the Education Officer was proper in view of Circular dated 30.10.1991 and the D.O. Letter dated 3.3.1992. Copies of these two documents are annexed to the reply. We have perused them. It is found that there was blanket prohibition for appointments of non teaching staff in private aided primary schools. In the year 1990, this blanket prohibition was lifted and vacancies created by death, resignation or on superannuation was permitted to be filled in. The petitioner was appointed pursuant to approval of staffing pattern given to the management in the year 1992-93 by the Education Officer (Primary), Zilla Parishad, Parbhani. In this staffing pattern, one post of clerk was provided. The affidavit of the respondents indicates that the staffing pattern for the year 1992-93 to the extent of non teaching staff was incorrect, in as much as, during those days, new posts could not have been created and sanctioned. We are however, not inclined to accept this explanation. We are also not inclined to uphold the impugned decision which was taken in the year 1998, withdrawing sanction for appointment of the petitioner on the following reasons:-

- I) The first reason is that, rightly or wrongly, the staffing pattern was permitted in the year 1992-93 and accordingly the petitioner was appointed. His appointment was also approved by the concerned authority and he was allowed to work for almost next six years.
- II) The second reason is that this Court also accepted his contention that in view of decision taken in the year 1992-93, his job should be protected. The interim order specifically mentioned that the petitioner should be treated as an approved employee till disposal of the petition.
- III) The third reason is delay in disposing of this petition. Since 2000 the petitioner is working as a clerk and has been treated as an approved employee of the school.

3. We are therefore, not inclined to disturb the present position of the petitioner and we would allow the petition in terms of interim order passed by this Court.

4. The writ petition is thus allowed. Rule made absolute. The impugned order dated 21.7.1998 is set aside. The respondent Education Officer is directed to accord approval to the petitioner's appointment w.e.f. 15.7.1992 onwards.

**( V. K. JADHAV, J.)**

**( A. V. NIRGUDE, J. )**

rlj/