

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.5227 OF 2012

YUVRAJ S/O AMBADAS SURYAWANSHI,  
AGE-29 YEARS, OCCU-PRIMARY TEACHER,  
R/O BHUWIKAS BANK COLONY,  
UMARGA, TQ.UMARGA,  
DIST.OSMANABAD

PETITIONER

VERSUS

1. THE STATE OF MAHARASHTRA,  
THROUGH ITS SECRETARY,  
SOCIAL WELFARE DEPARTMENT,  
MANTRALAYA, MUMBAI-32,
2. THE DIVISIONAL SOCIAL WELFARE OFFICER,  
LATUR, DIVISION LATUR,
3. THE DISTRICT SOCIAL WELFARE OFFICER,  
GROUP I, OSMANABAD, DIST.OSMANABAD,
4. THE PRESIDENT,  
SHRI SANT MARUTI MAHARAJ KANEGAONKAR  
PRIMARY ASHRAM SCHOOL,  
BHOSGA, TQ.UMARGA, DIST.OSMANABAD,
5. THE SECRETARY,  
SHRI SANT MARUTI MAHARAJ KANEGAONKAR  
PRIMARY ASHRAM SCHOOL,  
BHOSGA, TQ.UMARGA, DIST.OSMANABAD,
6. THE HEADMASTER,  
SHRI SANT MARUTI MAHARAJ KANEGAONKAR  
PRIMARY ASHRAM SCHOOL,  
BHOSGA, TQ.UMARGA, DIST.OSMANABAD.

RESPONDENTS

Mr.S.S.Thombre h/f Mr.G.J.Kore, Advocate for the petitioner.  
Mr.B.R.Surwase, Advocate for respondent No.6.  
Mr.S.M.Jadhav, AGP for respondent Nos. 1 to 3.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/07/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Mr.Thombre, learned Advocate for the petitioner submits that an advertisement was published in “Daily Sakal” on 05/10/2006 calling for applications for one post of “Headmaster” and “Assistant Teacher” each. Prescribed qualification for both the posts was H.Sc. D.Ed. Applications were to be filed upto 14/10/2006.

3. Mr.Thombre frankly submits that this advertisement was not placed before the Appellate Authority/Respondent No.2 since the petitioner did not have copy of the said advertisement. He, however, adds that the Headmaster / respondent No.6 who was also appointed pursuant to the same advertisement, did not place it before respondent No.2.

4. Mr.Thombre further submits that the petitioner was appointed as an “Assistant Teacher” on temporary basis by order dated 23/10/2006. He worked till the academic year ended in 2007. It is undisputed that the approval was not granted to the appointment of

the petitioner for the said period.

5. Mr.Thombre further submits that by appointment orders dated 12/06/2007 and 12/06/2008, he was appointed as an “Assistant Teacher” on temporary basis for 2 years. Necessary approval was granted to both these appointment orders vide order dated 30/10/2007 and 17/11/2008.

6. Mr.Thombre submits that though this appointment was shown as a “Temporary Assistant Teacher”, he should be given the benefit of Section 5(1), (2) and (2A) so as to be treated as having attained the deemed status of a confirmed employee.

7. He further submits that because the advertisement dated 05/10/2006 was not before respondent No.2/Appellate Authority, his appeal against his termination dated 09/06/2009 was turned down. He was given a copy of the advertisement under the Right to Information Act after respondent No.2 had decided his appeal by the impugned order 27/12/2011. He submits that if the advertisement was placed before respondent No.2, the result / outcome of the appeal would have been different. He further submits that he has not been paid his salary pursuant to his working in the academic

year 2006-07.

8. Mr.Surwase, learned Advocate has appeared on behalf of respondent No.6. Learned AGP appears on behalf of respondent Nos. 1, 2 and 3. Respondent Nos. 4 and 5 are served who have chosen not to enter an appearance.

9. Mr.Surwase submits that an affidavit in reply has been filed by respondent No.6 contending therein that the petitioner was appointed purely on temporary basis. His appointment by order dated 23/10/2006 was not for the entire academic year. Approval was duly accorded to the appointment orders dated 12/06/2007 and 12/06/2008. The petitioner was appointed as a "Non-resident Teacher". The strength of non resident students fell, due to which the petitioner was required to be terminated. He was appointed on year-to-year basis. A fresh appointment in 2009 was not issued since the number of non resident students reduced.

10. The learned AGP has submitted that respondent Nos. 1, 2 and 3 have filed an affidavit in reply. He confirms the submissions made by Mr.Surwase. He further states that the benefit of Section 5 was not available to the petitioner as his appointment was not on a

permanent post as there were already 3 teachers appointed as against the strength of residential students which was 120. He, however, submits that the contention of the petitioner that he was appointed pursuant to the advertisement in a similar way as the Headmaster was appointed, was not looked into by respondent No.2 as neither the petitioner nor the Management had produced the advertisement.

11. Having considered the controversy, it is apparent that the petitioner was appointed for 2 academic years from 2007-08 and 2008-09. The post of "Assistant Teacher" was reserved for ST and OBC category. The petitioner belongs to OBC category. It is contended by the petitioner that one post for OBC category is still vacant and the strength of non-resident students is sufficiently high in order to appoint the petitioner. The Special District Social Welfare Officer was a party to the proceedings before the Appellate Authority as respondent No.4.

12. In the light of the above, I am of the view that Appeal No.1/2009 deserves to be remitted to respondent No.2 / Appellate Authority. The advertisement, which is dated 05/10/2006 and placed on record before this Court, shall be placed before the Appellate

Authority by the petitioner. Respondent No.3 herein, who is the respondent No.4 before the Appellate Authority, shall file an affidavit in Appeal No.1/2009 indicating whether the appointment of the petitioner was against a permanent vacant post. He shall also state whether the said post reserved for OBC category is still available with the Management to be filled in and the strength of the students, which is relevant for the appointment of an "Assistant Teacher".

13. In the light of the above, this petition is partly allowed. The impugned order dated 27/12/2011 passed by the Appellate Authority in Appeal No.1/2009 is set aside. The Appellate Authority shall consider the effect of the advertisement and the information put forth by respondent No.4 (in the appeal) through an affidavit and shall decide Appeal No.1/2009 by hearing all the sides on its own merits without being influenced by its observations set out in the impugned order dated 27/12/2011, which is now set aside.

14. Needless to state, the issue of outstanding salary / unpaid salary of the petitioner shall also be considered by the respondent No.2 and he shall pass necessary orders thereon.

15. The litigating sides shall appear before respondent No.2 on

24/07/2015 at 11.00 a.m. and shall file a copy of this order before the said Court. Appeal No.1/2009 shall be decided by the Appellate Authority as expeditiously as possible and preferably on or before 31/10/2015. The litigating sides shall refrain from seeking adjournments on unreasonable grounds.

16. Rule is made partly absolute in the above terms.

( RAVINDRA V. GHUGE, J.)