

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4757 OF 2012

GANESH RATNAKAR GANGURDE,
AGE-37 YEARS, OCCU-NIL,
R/O.NEHERE NIWAS, SHIVNAGAR,
KANNAD, TQ.KANNAD,
DIST.AURANGABAD

PETITIONER

VERSUS

1. KAI.GURUDAYALSINGH RATHOD
MAGASVARGIYE SHIKSHAN SANSTHA, BRAHMNI
GARADA,
TQ.KANNAD, DIST.AURANGABAD,
THROUGH ITS PRESIDENT,

2. THE HEAD MASTER,
KAI.GURUDAYALSINGH RATHOD
MAGASVARGIYE SHIKSHAN SANSTHA, BRAHMNI
GARADA,
TQ.KANNAD, DIST.AURANGABAD,
THROUGH ITS PRESIDENT,

3. THE SPECIAL DISTRICT WELFARE OFFICER,
AURANGABAD, DIST.AURANGABAD.

RESPONDENTS

Mr.G.V.Wani, Advocate for the petitioner.
Mrs.S.D.Shelke, AGP for respondent No.3.
Mr.Syed Masood Chand, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/06/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard by the

consent of the parties.

2. The petitioner takes exception to the judgment and order dated 02/05/2012 delivered by the School Tribunal in Appeal No.13/2010.

3. Contention of the petitioner is that he was appointed by order dated 15/10/2007 on a sanctioned post. He has worked till 22/11/2009 and has been orally terminated from employment. The post of Clerk was sanctioned. An advertisement in "Daily Swarganga" was published, pursuant to which the petitioner had applied for being considered for appointment as a "Clerk". He was selected for the said post and was appointed by the Management.

4. The petitioner further submits that his appointment was approved and though the employer has attempted to demonstrate that he was appointed for a tenure ranging from 15/10/2007 to 30/06/2008, he had actually worked till 22/11/2009 and was then orally terminated. It is, therefore, prayed that a right is created in the petitioner to continue as a Clerk and the respondent deserves to be directed to reinstate the petitioner with continuity, back wages and regularization.

5. Mr.Syed, learned Advocate appearing on behalf of the respondent Management submits that since a post of Sr.Clerk was created and the concerned clerk Mr.Chavan was promoted to the said post, the position of Jr.Clerk became temporarily vacant. The petitioner was appointed for a period from 15/10/2007 to 30/06/2008 and accordingly his proposal was forwarded to the Education Department, which was accorded approval only for the said period.

6. It is further submitted that subsequently the additionally created post of Sr.Clerk was withdrawn and the concerned Sr.Clerk Mr.Chavan then occupied the position of a Clerk. As on date, there is no post of Clerk available. The petitioner had kept on visiting the school premises and was unauthorizedly signing the muster roll beyond 30/06/2008. When this was discovered, he was prevented from signing the muster roll as he was not in employment after 30/06/2008.

7. Neither was the petitioner appointed on probation nor was any Selection Committee constituted in accordance with the M.E.P.S.Act for conducting a regular selection process. The post on which the petitioner temporarily worked, is no longer in existence. The

appointment of the petitioner was purely on temporary basis.

8. Having considered the submissions of the rival sides, I have gone through the petition paper book with the assistance of the learned Advocates. The School Tribunal, in Appeal No.13/2010, by which the petitioner had challenged his oral termination, has come to a conclusion that the petitioner has neither placed on record the advertisement which he claims to have been published, nor has he been able to establish that he was selected by a regularly constituted Selection Committee under the M.E.P.S.Act and was therefore appointed as against a permanent vacant post.

9. The Tribunal has also concluded that the appointment order of the petitioner was signed by the President of the Educational Institution and was not signed by the Secretary or Head Master of the School Committee as is the requirement of Law in the light of the ratio laid down by this court in the case of Ashok Vs.Presiding Officer, 2003(2) BCR 862.

10. Having considered the controversy and the material on record, I find that the petitioner has not been able to establish that he was selected as against a permanent vacant post of a Clerk. The said

post is no longer available. The appointment of the petitioner was for a specific duration which was approved by the competent authority of the Education Department. I am, therefore, unable to accept the contention of the petitioner that he could be said to have acquired a right to occupy the post of Clerk and to continue on the said post as being a regularly selected candidate.

11. I, therefore, do not find any error committed by the School Tribunal in delivering the impugned judgment dated 02/05/2012.

12. As such, the petition is devoid of merit and is therefore dismissed.

13. Rule is discharged with no order as to costs.

(RAVINDRA V. GHUGE, J.)