

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1190 OF 2015
Prakash Devidas Kubde .vs. The State of Maharashtra & others

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Mr. H.N. Potbhare, Advocate for petitioner,
Mrs. B.H. Dangre, Government Pleader for respondent nos.
1 to 4.

CORAM : MOHIT S. SHAH, C. J. &

A.M. BADAR, J.

DATED : AUGUST 11, 2015

1] By this petition, the petitioner - a Shikshan Sevak, working in the Junior College run by Respondent No. 6 Society, is challenging the order passed by Respondent No.3, the Deputy Director of Education on 13.8.2014 (Annexure-I), thereby rejecting the proposal for grant of approval to his appointment.

2] We have heard Mr. Potbhare, the learned Counsel appearing for the petitioner. According to his submissions, on the basis of valid permission to fill in the vacant post granted by Respondent No.2 Deputy Director of Education, the management has conducted interview after advertising the post

and after following due process as contemplated by the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 the petitioner came to be appointed as Shikshan Sevak. According to the learned Counsel for the petitioner, subsequently the Deputy Director of Education has rejected the permission to fill in the post on the basis of some directions from the Director of Education but later on, in order to ensure that education of the students should not suffer original permission came to be restored. Therefore, according to the learned Counsel for the petitioner, the impugned order of rejection of approval to the appointment of the petitioner is *per se* illegal.

3] Mrs. B.H. Dangre, learned Government Pleader appearing for respondent nos. 1 to 4, tried to justify the impugned order by contending that after restoration of permission to fill in the vacant post, the management ought to have conducted interview and thereafter only the management ought to have filled in the post.

4] We are unable to agree with the submissions of the learned Government Pleader for the reason that it was on

23.8.2012 that the Deputy Director of Education had granted permission to Respondent No.5 Society to fill in the vacant post of Shikshan Sevak and in pursuance to that permission, an advertisement (Annexure C) came to be issued by the management inviting applications for filling in the post of Shikshan Sevak on 5.9.2012. After considering the merits of the candidates, who applied in pursuance of that advertisement, the petitioner came to be selected and appointed as Shikshan Sevak. It is thus clear that after getting permission on 23.8.2012, Respondent No.6 issued an advertisement on 5.9.2012 calling application from the eligible candidates. It was after issuance of advertisement by the management, the Deputy Director of Education on the basis of instructions from the Director of Education cancelled that permission but it was again restored by a communication dated 11.12.2012 (Annexure R-3-C). This original permission to fill in the vacant post of Shikshan Sevak granted on 23.8.2012 as such stood restored.

5] It is not the case of the Respondent No. 3 Deputy Director of Education that there was illegality in filling in the post or that the provisions of Rule 9 of Rules of 1981 were not

followed by the management while filling in the vacant post of Shikshan Sevak. As such, the action of the Deputy Director of Education in rejecting the proposal for approval of appointment only on the ground that interviews ought to have been conducted after restoration of permission is per se arbitrary and improper. It would be highly improper to require the Respondent No.6 to undertake fresh process of recruitment particularly when the permission to fill in the vacant post granted on 23.8.2012 was restored by the Deputy Director of Education.

6] As such, for the stated reasons, we quash and set aside the impugned order dated 13.8.2014 passed by the Deputy Director of Education rejecting the proposal for approval of appointment of the petitioner. Respondent no.3 Deputy Director of Education should reconsider the proposal for approval of appointment of the petitioner afresh in the light of foregoing reasons by keeping in mind the fact that it was prior to withdrawal of the permission to fill in the vacant post, the advertisement was issued and that the permission granted on 23.8.2012 for filling in the vacant post of Shikshan Sevak has been restored by him on 11.12.2012.

The petition is disposed of in terms of these directions with no order as to costs.

CHIEF JUSTICE.

J.

A. M. BADAR, J.