

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5688 OF 2013

Ashok Ganbaji Navkhare & Ano. Vs. Dy. Director of Education Nagpur & Ors.

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

Court's or Judge's Order

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Shri P. N. Shende Adv for petitioners.
 Shri Kale AGP for respondents 1 & 2.

CORAM: B. P. DHARMADHIKARI &
A.S.CHANDURKAR JJ.

DATED: 27th JANUARY, 2015.

Petitioners appointments for the first time were granted approval only for one year subject to fulfillment of backlog. There was subsequent approval and school has been de-recognized in the year 1997. Writ Petition filed by management vide Writ Petition No. 2074 of 1997 challenging that de-recognition order was dismissed.

Shri Shende, learned counsel for the petitioners submits that petitioners were appointed after following proper procedure. However, while granting approval as backlog was not verified approval of one year only was granted and it was subject to

verification of backlog. The backlog was not verified till the year 2006. In the year 2006 for the first time the backlog was verified and petitioners appointments were found against open category post. He submits that there after vide order dated 21.01.2010 the request of petitioners for absorption was rejected and it was questioned in Writ Petition No. 1161 of 2009. That Writ Petition was allowed to be withdrawn on 12.08.2010. He submits that in this situation as petitioners ought to have been granted approval on probation and there after on permanent basis, after expiry of period of two years, in the light of provisions of M. E. P. S. Act they were and are entitled to absorption.

Learned Assistant Government Pleader submits that approval granted initially only for one year was never questioned and no challenge was raised even after de-recognition. After verification of backlog in 2006 first Writ Petition filed was in the year 2009 and it was withdrawn without any liberty. There after present Writ Petition has been filed on 28.08.2013.

We find that Writ Petition no. 1161 of 2009 was withdrawn on 12.08.2010 with liberty to make appropriate representation to competent authority. The order denying entitlement of petitioners to absorption is dated 21.01.2010. There

after present Writ Petition has been filed almost after three years i.e. on 28.08.2013.

Petitioners had cause of action initially when approval was granted only for one year. It also accrued in the year 1997 when school was de-recognised and the approval to their service was not granted. 2006 verification of backlog therefore has got no bearing on present controversy. Even if 2006 verification is accepted, the Writ Petition No. 1161 of 2009 was withdrawn to make representation. This withdrawal dated 12.08.2010 is after recording of a finding of denial of absorption to them on 21.01.2010.

In this situation we find present challenge stale. Petition is therefore rejected. No cost.

JUDGE

JUDGE

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