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

Writ Petition No.5243 of 2013
(Ajanan Ramrao Kekade .vs. State through its Principal Secretary, Deptt. of Higher and Technical Education and Ors.)

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

Mr.R.M.Bhangde, Adv. for the petitioner.
Mr.T.R.Kankale, A.G.P. for respondent nos. 1 to 3.
Mr.Pranav Bibekar, Adv. h/f. Dr.Anjan De, Adv. for respondent no.4.
Mr.A.S.Kilor, Adv. for respondent no.6.

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 16th JANUARY, 2015.

Heard the learned Counsel for the respective parties. None appears on behalf of respondent no.5/College.

By the impugned order dt.12th/17th August, 2013, appointment of the petitioner as Superintendent in respondent no.5/College is found vitiated on two grounds : the first one is vacancy was not advertised in the State level or the District level Newspaper and the second one is appointment has been made during the ban period.

After hearing the learned Counsel for the respective parties, we find that the ban was in force from 5.6.2010 till 4.6.2011. It has been again imposed on 30.6.2011 for a period of one year. It has been further extended for further one year. However, this extension is published in the Government gazette on 30.6.2011.

The petitioner states that the recruitment process was completed after 5.6.2011 and before 28.6.2011. The ban has been in force thereafter and it cannot undo the recruitment process which was already over. It can, at the most, apply and regulate the events subsequent to 30.6.2011.

Mr.T.R.Kankale, learned A.G.P. for respondent nos. 1 to 3, Dr.Anjan De, learned Counsel for respondent no.4 and Mr.A.S.Kilor, learned Counsel for respondent no.6 submit that, on 30.6.2011, the ban in force till 4.6.2011 has been extended for a further period of one year i.e. from 5.6.2011 till 4.6.2012.

Insofar as publication of advertisement is concerned, according to the petitioner, the advertisement was published in English Newspaper “Lokmat Times, Marathi Newspaper “Pradarshan” and Hindi Newspaper by name “Prernapunj”. All these Newspapers are duly recognized by the State Government and as such, the contention that the advertisement was not properly published is unsustainable.

Learned A.G.P. as also learned Counsel for the respective respondents submit that Newspapers “Pradarshan” or “Prernakunj” do not have wide circulation and interviews were directly held as walk in interview. The applications were not invited and there was no scrutiny.

Mr.A.S.Kilor, learned Counsel for respondent no.6 adds that only relatives of the Managing Committee Members were called for the interview and as such, it was only a farce. He also points out that the vacancy in the cadre of Superintendent was available since 2005 and it was deliberately not filled in though one Patil, who was then

eligible to occupy, was available for such appointment and therefore, immediately after his retirement, the said vacancy has been filled in.

Learned A.G.P. submits that the vacancy cannot be filled in except by way of promotion and hence, the impugned order cannot be said to be erroneous or perverse.

Mr.R.M.Bhangde, learned Counsel for the petitioner points out that, from 2005 till expiry of period of 1½ years after elections were conducted in 2012, nobody raised any objection. He submits that, the complainants who objected to selection of petitioner, lost 2012 elections and thereafter, have chosen to raise objections, that too belatedly.

The contention that vacancy was not filled in for more than five years in order to dodge the claim of said Mr.Patil is raised for the first time before this Court and there was no such effort before the other Authorities. Mr.R.M.Bhangde, learned Counsel also invites our attention to the fact that Mr.Patil has expressed his unwillingness to occupy that post.

The learned Counsel has also pointed out that the contention that only relatives were called for walk in interview is also not borne out from record and the candidates who attended that interview were not in relation to the Committee member who conducted interview. The learned Counsel also points out that the delegates from Employment Exchange have also attended the said interview.

Mr.A.S.Kilor, learned Counsel for respondent no.6, at this stage, submits that Dainik “Pradarshan” is not

having wide circulation as it's reported circulation is about 10,000 copies.

The impugned order mentions only two grounds. Though copies of the Newspaper “Lokmat Times” were produced before said the Authority and the news items published in both copies of very same Newspaper were different, both copies carried advertisement. It is also not in dispute that publication Dainik “Pradarshan” also carried advertisement. The State Government or then the Authorities have not said that Dainik “Pradarshan” is not an authorised or recognized Newspaper and therefore, the advertisement could not have been released to it. The publication of advertisement in “Prernapunj” pointed out by the petitioners today is by institution of petitioners i.e. respondent no.5/College and that has not been considered by the said Authority.

Mr.Patil did not make any grievance while he was in service. His retirement is not in dispute. None of the respondents have pointed out that, after retirement of Mr.Patil, anybody else was eligible to claim promotion as a Superintendent. The ban imposed by the Government Resolution dt.5.6.2010 was in force till 4.6.2011. Respondent nos. 4 and 5 had sought permission to fill in vacancy on 5.8.2010. While giving them permission, they were authorised to proceed further after the ban period. Accordingly, after expiry of ban on 7.6.2011, advertisement was published. Selection was then carried out and the petitioner has been appointed on 28.6.2011. Till 28.6.2011 there was no extension of the said ban period. The extension comes for the first time on 30.6.2011 and it was

for further period of one year.

In this situation, it is obvious that when respondent nos. 4 and 5 have acted when there was no order of extension, the order of extension by itself cannot wipe out the events which have taken place after 5.6.2011 till 29.6.2011.

The contention of Mr.A.S.Kilor, learned Counsel that the members of staff of respondent nos. 4 and 5 were not aware of promotion given to the petitioner for more than 1 ½ year cannot be accepted atleast in these proceedings.

Mr.A.S.Kilor, learned Counsel has also submitted that a junior clerk in employment could have been promoted as a senior clerk and that the senior clerk, in turn, could have been considered for the post of Superintendent. However, when the process was undertaken, there was nobody in the next below cadre and this fact is not in dispute. Even Mr.Patil earlier had given his no objection for filling in the post by direct recruitment.

The provisions in the Non Teaching Staff Standard Code, 1984 nodoubt require filling in post by promotion only. Therefore, said promotion is to be given to the candidate in the next below cadre. The said provisions, therefore, cannot be considered to mean that if there is nobody in the next below cadre, the post cannot be filled in.

In this situation, we find that the impugned order dt.13th/17th August, 2013 is unsustainable. It is quashed and set aside.

Insofar as the disputed questions sought to be raised before this Court are concerned, we keep the same open and grant liberty to the respondents to raise them

before the appropriate Forum in accordance with law. The Writ Petition is, thus, allowed and disposed of.

As the impugned order is quashed and set aside, respondent no.3 shall accordingly undertake fresh exercise to determine the staff strength within a further period of four weeks.

The amount payable to the petitioner towards salary deposited with the Registry of this Court in terms of order dt.19.12.2013 passed by this Court is allowed to be withdrawn by the petitioner.

JUDGE **JUDGE**

jaiswal