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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO.2531/2011
WITH
CIVIL APPLICATION NO.2796/2016**

Deelip s/o Uttamrao Bhosale,
Age 39 years Occ – Service,
R/o Talegaon Tq. Ambajogai Dist. Beed.
...Petitioner...

Versus

- 1 Secretary,
Mahatma Phule Shikshan Prasarak
Mandal Kingaon, Tq. Ahmadpur,
Dist. Latur.
- 2 Headmaster,
Vasantrao Naik Prithamik Ashram
Shala Kingaon, Tq. Ahmadpur,
Dist. Latur.
- 3 Special District Social Welfare
Officer, Latur.
...Respondents...

.....

Shri V.V. Bhavthankar, Advocate for petitioner.
Shri S.S. Thombre, Advocate for respondent nos.1 & 2.
Shri D.R. Korde, AGP for respondent no.3.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 10.03.2016

ORAL JUDGMENT :

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1] The learned Advocates for the respective sides graciously consented for the hearing of the petition itself. Considering the same, the Civil Application No.2796/2016 is allowed and the writ petition is taken up for hearing.

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

3] The grievance of the petitioner is that despite having worked continuously as a Sports Teacher from 16.6.2007 till 16.6.2009, his termination has been upheld by the impugned order dated 22.11.2010 passed by the appellate authority-cum-Divisional Social Welfare Officer, Latur.

4] The petitioner submits that he was initially appointed on 16.6.1997 after he acquired the qualification of B.A., B.P.Ed. He was continued on year-to-year basis. The said school at Maindwadi Tq.Ambajogai Dist.Beed was shifted to Kingaon Dist.Latur in 2005-06.

5] He further submits that he was continued even thereafter and was orally terminated on 16.6.2009. He, therefore, preferred Appeal No.3/2009 before the Divisional Social Welfare Officer, which was dismissed by

the impugned order.

6] He further submits that as per the information received under the Right to Information Act from the Head Master of the concerned school at Kingaon Tq.Ahmedpur Dist.Latur, he has been working from 1997 and is shown to be as a temporary. His month to month salary, ever since he has joined till the date of termination, has not been paid to him.

7] It is further pointed out that by virtue of Clause 8(d) of the Government resolution dated 3.6.1999, the petitioner is eligible to be appointed as a Sports Teacher since the required qualification is Bachelor in any faculty with B.P.Ed. It is, therefore, prayed that this petition be allowed and the impugned order be quashed and set aside.

8] Shri Thombre, learned Advocate appearing on behalf of respondent nos.1 & 2 submits that the petitioner was issued with an appointment order dated 25.6.2006 by which he was appointed as an Assistant Teacher on temporary basis only for one academic year. Subsequent appointment orders also indicate the appointment for one year. Eventually, the petitioner had

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to be terminated since there was no sanctioned vacant post of a Sports Teacher in the school operated by the management.

9] He further submits that the petitioner was not appointed by following any procedure since there was no vacant post. Though he has acquired B.A., B.P.Ed. qualification, on account of no sanctioned post, the appropriate authority declined to grant any approval to his continuation. The management cannot be blamed for dispensing with the service of the petitioner since the competent authority had declined to grant an approval and the petitioner could not be continued thereafter merely because he was engaged by the management. He, therefore, prays for the dismissal of the petition.

10] The learned AGP appearing on behalf of respondent no.3, submits that the impugned order can neither be termed as being perverse nor erroneous. When there was no sanctioned post, approval could not have been granted by the competent authority. Even if it is presumed that the petitioner is qualified, it would not mean that he could be accommodated against a non-existing post. He, therefore, submits that the appropriate

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authority could not have granted an approval and in the event the management desires to continue the petitioner, it may do so, provided it is so permitted in law and at their own costs.

11] I have considered the submissions of the learned Advocates.

12] After going through the impugned order, it was put to the learned Advocate for the petitioner as to whether he could point out any document, which would indicate availability of a vacant post of Sports Teacher with the respondent – school. The petitioner could not indicate from any document about any existence of such a vacant post or about the sanction of a post for a Sports Teacher in the school.

13] It is undisputed that as there was no post, there was no advertisement published seeking applications for an appointment. Naturally, there was no procedure that was followed for carrying out any recruitment to the post of a Sports Teacher. The impugned order delivered by the appellate authority indicates that all the above factors have been taken account. The contention of the petitioner that he has been working from 16.6.1997 could

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not be proved as there was no document before the concerned authority. Based on the material before the appellate authority, I do not find that the impugned order could be termed as being perverse or erroneous.

14] The petitioner claims to have obtained documentary evidence under the Right to Information Act on the basis of which his claim that he has been working from June, 1997 is established. The petitioner, therefore, would be at liberty to take recourse to such a remedy as may be available in law to raise a claim that he has been working from June, 1997, onwards till 16.6.2009.

15] So also the petitioner contends that he has not been paid any wages for the period 16.6.2006 till 16.6.2009. From the proceedings available on record, his tenure of service from 16.6.2006 to 16.6.2009 is established. To the extent of this petition, therefore, his claim that he has not been paid wages for the said three years could be entertained.

16] As such, in the event the petitioner has not been paid his wages for the said three years or for any period in the said three years, the respondent -

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management would be under an obligation to calculate his wages and make the payment since no employee can be made to work without salary and no employer could be permitted to extract work without salary. Therefore, if the respondent – management has not paid the wages of the petitioner for any duration in the abovesaid three years, the management shall accordingly make the payment within a period of eight weeks from today.

17] With the above directions and without causing any interference in the impugned order, this petition is partly allowed. Rule is made partly absolute. No order as to costs.

(RAVINDRA V. GHUGE, J.)