

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6894 OF 2015

**VIJAY LAXMAN DUKARE
VERSUS
SHIVAJI SHIKSHAN PRASARAK MANDAL THROUGH ITS PRESIDENT
AND OTHERS**

...
Advocate for Petitioner : Shri Jadhavar Santosh S.
AGP for Respondent 3 : Shri A.V.Deshmukh.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2016

Per Court:

1 Despite service of court notice, Respondent Nos.1 and 2/
Management have not chosen to appear.

2 The Petitioner is aggrieved by the judgment and order dated
10.02.2012 delivered by the School Tribunal by which Appeal No.83/2011
filed by the Petitioner was dismissed.

3 It is submitted that the Petitioner was engaged as a Shikshan
Sevak in 1995 only for one academic year. This was followed by two
appointment orders in 1996 and 1997 again for one academic year each.
It is conceded that from the academic year 1998-1999, the Petitioner/

Employee was not in employment of the Management upto the order dated 24.01.2009 vide which he was appointed as a Shikshan Sevak.

4 Shri Jadhavar, learned Advocate for the Petitioner, has pointed out the appointment order dated 24.01.2009 indicating that he was appointed as a Shikshan Sevak w.e.f. 02.02.2009 till 01.02.2012. His service was to be brought to an end pursuant to the expiry of the said period. Shri Jadhavar, therefore, submits that under the MEPS Act, 1977 and the Rules, 1981, a candidate having been appointed as a Shikshan Sevak for three years, has to be presumed to be appointed on probation for that period.

5 By communication dated 01.08.2011, the Management informed the Petitioner that he was being disengaged forthwith since Respondent No.3/ Education Officer has not accorded approval to his engagement on the basis that the Management had not filled in the backlog of reservation. Shri Jadhavar submits that this was the only ground voiced by the Management in the order of termination.

6 He draws my attention to the conclusions arrived at by the School Tribunal in paragraph 5 of the impugned judgment wherein, the stand taken by the Education Officer is recorded and which indicates that

the Education Officer has declined approval only for the reason that there was backlog of the reserved category positions and hence, the Petitioner could not be granted approval. The School Tribunal has referred to the Written Statement of the Education Officer at Exhibit-11 wherein it is stated that as the posts of reserved category were not filled in, the Petitioner was not granted approval.

7 It is informed that the Management had appeared through an Advocate before the School Tribunal and had addressed two letters to the School Tribunal dated 09.01.2012 and 12.01.2012, which were treated as Written Statements of the Management.

8 The communications filed by the Management before the School Tribunal were at Exhibits 17 and 18 wherein it is categorically stated by the Management that due to the retirement of the employee on 31.12.2011 and since there is no backlog with regard to the reservation, the Petitioner can be absorbed and the Management is willing to absorb the Petitioner.

9 An affidavit in reply has been filed wherein the Education Officer has added to his objection of backlog in reservation by stating that because there was no advertisement, the engagement of the Petitioner as a

Shikshan Sevak was unsustainable. In yet another affidavit dated 12.08.2016 filed by the Education Officer pursuant to the orders of this Court dated 17.02.2016 and 03.08.2016, it is stated that one post has fallen vacant on 31.12.2011 and it continues to remain vacant. To the extent of whether, the Petitioner can be absorbed on the said post, the Education Officer states that as the Respondent/ Management has not followed the due procedure for appointment of the Petitioner as a Shikshan Sevak, the Education Officer cannot accord approval to him.

10 The learned AGP points out from paragraph 10 of the impugned judgment that the School Tribunal, after considering the material before it, has come to the conclusion that initial appointment of the Petitioner is not legal and hence, he cannot claim right to the post.

11 It is apparent that the Petitioner has worked for a period of about 02 years and 07 months as a Shikshan Sevak. His earlier three years of service from 1995 till the academic year 1997-1998 cannot be considered and cannot be reckoned with since he has not been in employment from the academic years 1998-1999 till 23.01.2009, which is almost 11 years. In this backdrop and considering the fact that the Education Officer has stated on oath that the appointment of the Petitioner was not legal, there cannot be a direction that the Petitioner

should be reinstated in service with continuity, even without back wages though the Petitioner is willing to waive the entire back wages.

12 Nevertheless, considering the Written Statements of the Management at Exhibits 17 and 18 and considering the desire of the Management to accommodate the Petitioner on the vacant post, which is presently available, it will have to be left to the Management to reinstate the Petitioner. Needless to state, there can be no direction to the Education Officer to grant approval to the appointment of the Petitioner until the legal requirement has been complied with keeping in view that he had worked only for a period of 02 years and 07 months. So also, there shall be no direction to pay the salary of the Petitioner from coffers of the State. The Management shall bear the burden.

13 In these peculiar and some what unusual facts, this Writ Petition is disposed of by granting liberty to the Respondent Nos.1 and 2/ Management to reinstate the Petitioner on the post available considering it's Written Statements at Exhibits 17 and 18 filed before the School Tribunal. The Management is at liberty to follow the due procedure for filling up certain posts which are still vacant and available and if the Petitioner applies for the said post and is eventually selected through a proper selection process, such eventuality shall be dealt with separately by

the Education Officer in relation to grant of approval as and when the occasion may arise.

14 Insofar as the laxity on the part of the Education Officer Mr.Laxman Sahebrao Pole and his act of not filing an affidavit as was ordered by this Court is concerned, the learned AGP submits that the said Education Officer is present in the Court and he would not claim TA & DA for attending the Court proceedings today and he will bear the said costs from his own pocket. He further submits that an unconditional apology has been tendered in writing in paragraph 1 of the affidavit in reply dated 12.08.2016 and hence, this Court may condone the delay on the part of the said Education Officer in filing the affidavit in reply. Considering the above statements and the apology tendered, the said Education Officer is pardoned, however, with a note of caution that he shall ensure that no further incident of this nature would occur.

15 The Writ Petition is, accordingly, disposed of.