

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

WRIT PETITION NO.9690 OF 2014

Siddheshwar Sakharam Mane,
Age : 29 years, Occupation : presently Nil,
R/o Achler, Taluka Lohara,
District Osmanabad.

...PETITIONER

-VERSUS-

- 1 Vidya Vikas Shikshan Prasarak
Mandal, Achler, Taluka Lohara,
District Osmanabad.
Through it's Secretary.
- 2 Vidya Vikas Secondary and Higher
Secondary School, Achler,
Taluka Lohara, District Osmanabad.
Through it's Headmaster.
- 3 The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

...RESPONDENTS

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Advocate for Petitioner : Shri Jadhavar Santosh S.
Advocate for Respondent 1 : Shri S.S.Thombre.
Advocate for Respondent 2 : Shri A.A.Mukhedkar.
AGP for Respondent 3 : Shri S.G.Karlekar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th July, 2016

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The Petitioner is aggrieved by the judgment and order dated 28.08.2014 by which his Appeal No.38/2013 challenging his termination dated 09.11.2011, has been dismissed.

3 The contentions of the Petitioner can be summarized as follows:-

- (a) A circular dated 1.11.2001 has been issued by the Desk Officer of the Ministry of Education, State of Maharashtra, informing the Director of Education (Secondary and Higher Secondary), that in the light of the Circular dated 28.8.2001, in the event, there is no School Committee in existence, the Headmaster, who is the Member /Secretary of the School Committee shall follow the norms and procedure for appointment of Assistant Teacher (Shikshan Sevak) and which can be done under his signature for a period of three years.
- (b) The Headmaster of the respondent School sought permission by communication dated 30.6.2011 from the Education Officer for filling in vacant posts.
- (c) By communication dated 26.7.2011, the Head Master sought

approval to the advertisement.

- (d) By communication dated 23.8.2011, the Headmaster sought approval to the roster and the advertisement. Similar communication is also dated 29.9.2011.
- (e) An advertisement was published on 5.10.2011, calling for applications for the post of Assistant Teachers.
- (f) The chart dated 14.10.2011 indicates the persons, who were present for the interviews, bearing the signature of the Headmaster.
- (g) A resolution is passed on 17.10.2011 under the signature of the Headmaster, thereby, selecting the petitioner as well as Shri Jaihind Balbhim Waghmare and Shri Atul Bhimashankar Jadhav.
- (h) An appointment order dated 7.10.2011 was issued to the petitioner under the signature of the Headmaster appointing him as an Assistant Teacher on temporary basis for a period of three years from 20.10.2011 till 19.10.2014.
- (i) A bond dated 17.10.2011 was executed by the petitioner in view of the condition set out in the appointment order.
- (j) The joining report dated 20.10.2011 was filed by the petitioner which was received and acknowledged by the Headmaster.

- (k) The petitioner was terminated orally on 9.11.2011 on the 20th day of his employment.
- (l) Appeal No. 16 of 2012 was preferred by the petitioner.
- (m) The respondent / management submitted its detailed Written Statement dated 3.10.2013 under the signature of the Headmaster Shri Someshwar Malakappa Gurav, who succeeded the earlier Headmaster on his retirement, who had appointed the petitioner.
- (n) The Education Officer stated before the School Tribunal that he has no record available with regard to the petitioner's appointment since the management did not submit any document either to communicate his appointment or for seeking approval to his appointment.

4 In the light of the above, this Court had directed the Education Officer (Secondary), Zilla Parishad, Osmanabad to file a specific affidavit disclosing the details of appointments of two employees, namely, Jaihind Baliram Waghmare and Atul Bhimshankar Jadhav, who were stated to be appointed under the same advertisement under which the Petitioner was appointed.

5 An affidavit has been filed by the Education Officer on
11.08.2015. Relevant paragraphs 9 to 11 read as under:-

- “9. I say and submit that, in the present matter, the Head Master/ so called Management has not obtained the NOC, verified roster from the B.C. Cell, in spite of that, it appears from the letter dated 29.10.2011 that the interviews are conducted by the Head Master/ so called Management. Hereto annexed and marked as Exhibit R-3 is the copy of letter dated 29.10.2011.
10. I say and submit that, the record in respect of appointment of Shri Jayhind Baliram Waghmare and Atul Bhimshankar Jadhav, as Asst. Teacher is not available in the office of the Deponent. However, after obtaining the record from the Head Master of Vidyavikas Secondary and Higher Secondary School, at Achler, Tq.Lohara, Dist.Osmanabad, it is revealed that, Shri Jayhind Baliram Waghmare was appointed for the period 08.11.2011 to 07.11.2014 but it is reveals from the muster roll maintained in the said school transpires that J.B.Waghmare had not been joined as per the order. It is further submitted that, Shri Waghmare was working in the said school on the division which is on permanent non grant basis in Higher Secondary Section for Marathi subject and on clock hour basis from 14.06.2010 to 30.04.2012. The said fact is also revealed from the muster roll of teachers.
11. I say and submit that, there is no appointment order of Shri Atul Bhimashankar Jadhav for the period of 20.10.2011 to 30.04.2012. It is also further submitted that, Shri Jadhav was working in said school on the division which is on permanent non grant basis in Higher Secondary Section for political science subject on clock hour basis from 14.06.2010 to 30.04.2012. However, the said fact reveals from the muster roll of teachers maintained by the School.”

6 Shri Thombre and Shri Mukhedkar, learned Advocates for the Respondents/ Management and Headmaster respectively, have strenuously opposed this petition. The contention is that the father of the Petitioner, who was earlier working as Clerk with the Institution, surreptitiously entered the name of the Petitioner and thereby, created the record in the muster roll. This was considered by the School Tribunal and based on the same, the appeal was dismissed.

7 The affidavit in reply filed by the Education Officer, which is reproduced as above, would indicate that the Petitioner was inducted after Mr.Waghmare had joined. There is, however, no evidence as regards the working of Mr.A.B.Jadhav. The Education Officer, however, submits that Mr.Jadhav was working from 14.06.2010 to 30.04.2012.

8 In the light of the above, I deem it proper to remit Appeal No.38/2013 to the School Tribunal, Solapur.

9 This Writ Petition is, therefore, partly allowed only to the extent of setting aside the impugned judgment of the School Tribunal dated 28.08.2014 and by remanding Appeal No.38/2013 to the School Tribunal, Solapur under the following directions:-

(a) The Education Officer (Secondary), Zilla Parishad,

Osmanabad shall file an affidavit before the School Tribunal setting forth the circumstances in which the Petitioner was appointed.

- (b) The affidavit in reply filed by the Education Officer in this Court on 11.08.2015 shall be placed before the School Tribunal.
- (c) The School Tribunal shall, therefore, consider whether, the Headmaster was authorized by the Management of the Institution to appoint the Petitioner pursuant to the advertisement dated 05.10.2011.
- (d) The School Tribunal shall consider whether, the dispute between the Management, meaning thereby that existence of two factions in the Management, would empower the Headmaster to issue the appointment orders.
- (e) The School Tribunal shall also consider whether, the service of the Petitioner/ original Appellant from 20.10.2011 till 09.11.2011 (19 days) would create any right for reinstatement, continuity of service and back-wages.
- (f) All the litigating sides are permitted to place additional documents, if any, before the School Tribunal.
- (g) The School Tribunal shall decide the appeal as expeditiously as possible and preferably on or before 31st March, 2017.

10 It be noted that since the above aspects and the affidavit of
the Education Officer has brought forth new facts, that the appeal has
been remitted to the School Tribunal. As such, this Court has, therefore,
not arrived at any conclusion as regards the respective contentions of the
litigating sides and the merits of the matter. Needless to state, all
contentions of the litigating sides are, therefore, kept open.

11 Rule is made partly absolute in the above terms.

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(RAVINDRA V. GHUGE, J.)