

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

WRIT PETITION NO. 2219/2016

(Sharique Husain Iqbal Hussain Qureshi and another vs. The State of Maharashtra and others )

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

Court's or Judge's order

Mr. H.A. Deshpande, Advocate for the petitioners  
Mr. Shyamal Kadu, Assistant Government Pleader for Respondent No.1  
Mrs. Sangita Jachak, Advocate for Respondent No.2  
Mrs. A.A. Kale, Adv.h/for Mr. R.S.Subhedar, Adv.for Res.Nos.3 & 4

**CORAM : SMT. VASANTI A. NAIK &**  
**MRS. SWAPNA JOSHI, JJ.**

**DATED : 21<sup>st</sup> November, 2016.**

Heard.

By this Writ Petition, the petitioners challenge the order of the Education Officer(Primary), Zilla Parishad, Buldana, dated 25/6/2014, as far as it abolishes the posts of Junior Clerk and Peon in respondent no.4-School.

According to the petitioners, who are appointed as Clerk & Peon, in the respondent no.4-School on 1.8.2012, their appointment was made after following the due procedure for selection. It is the case of the petitioners that a post of Junior Clerk and Peon became available in the respondent no. 4-School as the strength of the students in the respondent no. 4-School was more than 500 in the year 2011. It is stated that after seeking necessary permission from the Education Officer, the respondent no.4-School advertised the posts and the petitioners were appointed on the post of Junior Clerk and Peon. The petitioners were appointed as Sevaks for three

years and the Education Officer granted approval to the services of the petitioners vide an order dated 28.3.2013. The petitioners completed the probation period on 31.7.2015. The sanctioned strength of the students in the respondent no. 4-School always remained above 500 and it never dwindled below 500 at any point of time. However, in the year 2014, an *online* staffing approval was called and it is the case of the petitioners that though the posts of Junior Clerk and Peon were still available, the respondent-Education Officer refused to grant further approval to the appointment of the petitioners as Assistant Teachers, by the impugned communication dated 13.8.2015, on the ground that the said posts were not available and the petitioners are surplus.

Shri H.A. Deshpande, the learned counsel for the petitioners submitted that the strength of the students in the respondent no.4-School was more than 500 and a post of Peon and Junior Clerk each, was available in the respondent no.4-School, since the year 2011. It is stated that the strength of the students did not fall below 500 at any point of time till date and, in this background, it was necessary for the respondent-Education Officer to grant approval to the appointment of the petitioner on the post of Peon and Junior Clerk after they successfully completed their tenure as Sevaks. It is submitted that in view of the *online* staffing pattern, the claim of the petitioners was wrongfully rejected by holding that the posts could not have been sanctioned though they were required to be sanctioned as the strength of students was above 500. It is submitted that an identical issue came up for consideration before this Court in Writ Petition No. 4993/2015 and this Court has set aside the order of

termination of the services of the employee in that case, after holding that the Management, could not have terminated the services of the employee therein by declaring that he was surplus when the strength of the students did not fall below 500. It is stated that a similar order could be passed in this Writ Petition also, after quashing and setting aside the impugned order.

Mrs.Sangeeta Jachak, the learned counsel for the Respondent no.2-Zilla Parishad does not dispute that in almost identical set of facts, where the services of an employee were terminated by the Management of the School that fell within the jurisdiction of respondent no.2-Zilla Parishad, on the ground that the post could not be sanctioned any longer, the High Court has set aside the order of termination after holding that the services of the employee in the said Writ Petition, could not have been terminated as the strength of the students had not fallen below 500 and the employee could not have been declared surplus. It is stated that an appropriate order may be passed in the circumstances of the case.

Mrs. A.A. Kale, the learned Advocate holding for Shri R.S. Subhedar, the learned counsel for the respondent no.3 and 4 submitted that the strength of the students in the the respondent no.4 -School was always above 500 after 2011. The learned counsel supported the claim of the petitioners.

In the circumstances of the case, the respondent -Zilla Parishad could not have refused to grant approval to the appointment of the petitioners after the successful completion

of their tenure as Sevaks on 1<sup>st</sup> August, 2015. Admittedly, the strength of the students was always above 500 in the respondent no.4-School from 2011 onwards. If the appointment of the petitioners as Sevaks was approved by the respondent-Zilla Parishad after their appointment, the Zilla Parishad could not have refused approval to their services as regular Peon and Junior Clerk after completion of their tenure as Sevaks on 1<sup>st</sup> August 2015, as the strength of the students in the respondent no.4-School was always above 500. It is not the case of the respondent-Zilla Parishad that the norms pertaining to the student-employee ratio had changed after 2011. If the norms have not changed after 2011-12 and if the strength of the students is above 500 from 2012 till date, the Respondent-Zilla Parishad was not justified in refusing to grant approval to the services of the petitioners as Peon and Junior Clerk from 2015. In almost similar set of facts this Court has, by the judgment dated 7.12.2015 in Writ Petition No.4993/2015, set aside the order of termination of an employee.

Hence, for the reasons recorded herein-above and for the reasons recorded in the judgment dated 7.12.2015 in Writ Petition No.4993/2015, we allow this Writ Petition. The impugned order dated 13<sup>th</sup> August, 2015 is quashed and set aside. The respondent-Zilla Parishad is directed to consider granting regular approval to the appointment of the petitioners as Junior Clerk and Peon within one month.

Order accordingly. No costs.

**JUDGE**

**JUDGE**

*sahase*