

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

WRIT PETITION NO.17/2016

Vinaykumar s/o Bhimrao Bhaware

...Versus...

The Deputy Director of Education, State of Maharashtra, Amravati Division,
Amravati and others

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

Court's or Judge's orders

Shri B.G. Kulkarni, Advocate for petitioner
Shri V.P. Maldhure, AGP for respondent no.1

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

DATE : 25.07.2016

By this writ petition, the petitioner seeks a direction against the respondent – Deputy Director of Education, Amravati Division, Amravati to modify the order of approval, dated 26.5.2015 so as to grant approval to the petitioner as a Junior College Teacher from 17.7.2007.

The petitioner was duly qualified for appointment as a Junior College Teacher in the school run by the respondent – Management and the petitioner was appointed as a regular Junior College Teacher on 17.7.2007 after following the due process of selection. Before the appointment of the petitioner, an advertisement was issued and the petitioner was appointed on the post of Junior College Teacher as he was possessing the qualification of M.A. (English) and B.Ed. Though the petitioner was appointed in a permanent vacancy in the year 2007, a fresh

appointment order was issued in favour of the petitioner during every academic session. In the year 2010, the petitioner was not granted a fresh appointment order, thereby discontinuing his services and therefore, the petitioner challenged the said action on the part of the Management by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The said appeal was allowed by the judgment, dated 7.3.2012. The Tribunal held that the action on the part of the Management in terminating the services of the petitioner was bad in law. The Tribunal directed the Management to reinstate the petitioner in service and pay 50% of the salary, till the date of his termination. The Management was directed to pay the full salary of the petitioner after his reinstatement in service. It was held by the Tribunal that the petitioner would be entitled to continuity of service w.e.f. 17.7.2007.

The Management challenged the order of the Tribunal in a writ petition. However, the writ petition was withdrawn after the matter was compromised between the petitioner and the Management. The petitioner accepted the arrears of salary in installments. After the petitioner was reinstated in terms of the compromise, the Management sent the proposal of the petitioner to the Deputy Director of Education for grant of approval. The Deputy Director of Education, however, granted approval to the appointment of the petitioner w.e.f. 24.2.2014 on probation for two years. The said order is challenged by the petitioner so far as it rejects the claim of the petitioner for grant of approval w.e.f. 17.7.2007.

It is stated on behalf of the petitioner that the petitioner was appointed in a regular permanent vacancy by following the due procedure for selection on 17.7.2007. It is stated that the petitioner was duly qualified for appointment and after the Tribunal allowed the appeal filed by the petitioner, it was necessary for the Deputy Director of Education to grant approval to the appointment of the petitioner w.e.f. 17.7.2007. It is stated that the School is on permanent no grant-in-aid basis and the grant of approval to the petitioner from 17.7.2007 would not burden the State exchequer. It is stated that neither would the petitioner be entitled to the pensionary benefits by seeking approval from 17.7.2007 nor would there be any loss to the Government by granting approval to the petitioner from 2007.

Shri Maldhure, the learned Assistant Government Pleader appearing for the Deputy Director of Education has supported the impugned order and submitted that since the petitioner was having full workload w.e.f. 21.4.2014, the petitioner was granted approval on probation for a period of two years from the said date. It is stated that there was workload of only 12 hours in the year 2007 and hence, approval was not granted to the petitioner from 2007 in the absence of full workload. It is stated that the petitioner is having the workload in the subject of English and Marathi from 2010 and since the petitioner does not possess the necessary qualification in the subject of Marathi, the petitioner was rightly refused approval for the period from 2010.

On hearing the learned Counsel for the parties, we find that a case is made out on behalf of the petitioner for grant of

the relief claimed. In the circumstances of the case, a direction to the Deputy Director of Education to grant approval to the appointment of the petitioner from 17.7.2007 would be necessary. It is not in dispute that the petitioner was duly qualified to hold the post of Junior College Lecturer in the year 2007 as he had possessed the qualification of M.A. (English) and B.Ed. The appointment of the petitioner was made after following the due process of selection i.e. after the issuance of advertisement etc. After the Management terminated the services of the petitioner, the School Tribunal allowed the appeal filed by the petitioner against his termination and directed the reinstatement of the petitioner in service with continuity from 17.7.2007. The Management has reinstated the petitioner in service. We find that there was enough workload for the petitioner in the year 2007, when he was appointed. Our observation can be fortified by the permission granted by the authorities to the Management to fill the post of Junior College Lecturer. Merely because there was less workload during some subsequent years, the approval cannot be denied to the appointment of the petitioner w.e.f. 17.7.2007, more so, when the order granting approval to the petitioner w.e.f. 2007 would not be prejudicial to the State Government as no loss would be caused to the Government exchequer. The petitioner was appointed in the year 2007 and it is fairly stated on behalf of the petitioner that the petitioner has sought the approval from 17.7.2007 only with a view to retain the position of seniority vis-a-vis the other employees. In the circumstances of the case, it would be necessary to direct the respondent – Deputy Director of Education to grant

approval to the petitioner's appointment w.e.f. 17.7.2007. It would however be necessary for the petitioner to secure the additional qualification in the subject of Marathi, as per the requirement within the specified time, as provided by the Government Circulars, if need be.

For the reasons aforesaid, the writ petition is allowed. The impugned order stands modified. The respondent – Deputy Director of Education is directed to grant approval to the appointment of the petitioner w.e.f. 17.7.2007 for the purpose of seniority etc.

Order accordingly. No costs.

JUDGE

JUDGE

Wadkar

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

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