

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

WRIT PETITION NO. 473 OF 2016

Kuldeep s/o Atmaram Shende

-vs-

State of Maharashtra, thr.its Secretary, Department of Education and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.A.S.Kilor, counsel for the petitioner.
Mrs.Bharti Dangre, GP for the respondent Nos.1 & 2.
Mr. M.P.Khajanchi, counsel for the respondent Nos.3 & 4.

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

DATE : 15.07.2016.

By this writ petition, the petitioner seeks a direction against the respondents to grant approval to the appointment of the petitioner as an Assistant Teacher from 01/07/1995 by modifying the impugned order granting approval from 1999.

It is the case of the petitioner that the petitioner, who possesses the requisite qualification for appointment on the post of Junior College Teacher/Lecturer was appointed as such, on 01/07/1995 in pursuance of an advertisement, dated 21/06/1995, after following the due process of selection. The proposal of the petitioner was sent to the Deputy Director of Education for grant of approval. Since the claim of the petitioner was not favourably considered, the petitioner filed a writ petition in the year 2004. Since nothing was done by the respondents in the matter of grant of approval to the appointment of the petitioner for quite sometime, the petitioner filed a writ petition in the year 2015 seeking a direction against the respondents to grant approval to the appointment of the petitioner with effect from 01/07/1995. By the impugned order, dated 08/07/2015, approval is granted to the appointment of the petitioner from 1999. Since the prayer of the petitioner for grant of approval with effect from 01/07/1995 is not accepted and the petitioner is granted approval from 1999, the present petition is filed.

Shri A.S.Kilor, the learned counsel for the petitioner, states that the respondents were not justified in refusing to grant the approval with effect from 01/07/1995, when the petitioner was appointed, after following the due process of selection. It is submitted that the only reason for refusing to grant approval to the appointment of the petitioner from 01/07/1995 appears to be that there was a backlog of candidates in the reserved category. It is stated that the backlog was filled by the respondent-Management and the respondent No.2-Deputy Director of Education could not have refused to grant approval with effect from 01/07/1995, though the petitioner is continuously working as a Junior College Lecturer with the respondent-Management, with effect from 01/07/1995. It is stated that a direction be issued against the respondent No.2-Deputy Director of Education to grant approval to the appointment of the petitioner with effect from 01/07/1995 and the monetary benefits should also be released in favour of the petitioner accordingly.

Mrs. Bharti Dangre, the learned Government Pleader appearing on behalf of the respondent Nos.1 and 2, has supported the order of the Deputy Director of Education. It is stated that since there was a backlog of the scheduled tribes in the post of Junior College Lecturer, the petitioner was rightly refused approval with effect from 01/07/1995. It is stated that as soon as the backlog was filled in the year 1998, approval is granted to the appointment of the petitioner from the year 1999. It is further stated that the petitioner was given a workload of a part time Junior College Teacher from 2005 to 2012 and therefore, the impugned order was passed.

On hearing the learned counsel for the parties, we find that a direction needs to be issued against the respondent No.2-Deputy Director of Education to modify the order of approval to the appointment of the petitioner and grant approval to his appointment with effect from 01/07/1995. It is not disputed by the respondent Nos.1 and 2 that the petitioner is qualified to hold the post of Junior College Lecturer. It is also not the case of the respondents that the appointment of the petitioner was made without following the due procedure. If that be so, merely because there was a backlog of scheduled tribes in one of the posts of Junior College Lecturers, the

petitioner could not have been refused approval with effect from 01/07/1995. We also do not find any merit in the submission made on behalf of the respondent No.2-Deputy Director of Education in the affidavit-in-reply that the petitioner did not have the complete workload from 2005 to 2012. In this case, we are concerned with the grant of approval for the period from 1995 to 1999 and the question whether the petitioner had lesser workload from 2005 to 2012 would not be relevant while deciding the issue in regard to the eligibility of the petitioner to seek approval with effect from 01/07/1995. Since the petitioner is admittedly working as a Junior College Lecturer with effect from 01/07/1995 and the appointment of the petitioner is made by following due process of law, it would be necessary to direct the respondent No.2-Deputy Director of Education to grant approval to the appointment of the petitioner with effect from 01/07/1995. Though the petitioner is entitled for grant of approval with effect from 01/07/1995, the petitioner would not be entitled to the monetary benefits, as the first writ petition was filed by the petitioner in the year 2004. It is well settled that even admissible monetary benefits could be directed to be paid to a party only for a period of three years preceding the date of filing of the writ petition. Hence, though the petitioner would be entitled to approval with effect from 01/07/1995, the petitioner would not be entitled to arrears of salary for the said period. We make it clear that the petitioner would be entitled to continuity of service by considering his appointment to have been made and approved on 01/07/1995.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The respondent No.2-Deputy Director of Education is directed to modify the order of approval and grant approval to the appointment of the petitioner with effect from 01/07/1995. Order accordingly. No costs.

JUDGE

JUDGE

C E R T I F I C A T E

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

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 19/07/2016