

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

WRIT PETITION NO. 3126 OF 2007

Shri Raju s/o Dashrath Gadambe,
Age : 30 years, Occu. Service,
R/o Salwadi, Tq. Bhokar,
District Nanded

PETITIONER

VERSUS

1. The State of Maharashtra,
through Secretary of Tribal
Development Department,
Mantralaya, Mumbai-32
2. The Commissioner,
Tribal Development Department,
Nashik (M.S.)
3. The Project Officer,
Integrated Tribal Development
Project, Kinwat, Dist. Nanded
4. Additional Commissioner,
Tribal Development Department,
Amravati, At Amravati
5. The Chairman/Secretary,
Sant Gadgebaba Pratishthan,
Nanded, District Nanded
6. Head Master,
Post Basic Adivasi
Ashram School, Salwadi,
Tq. Bhokar, Dist. Nanded

RESPONDENTS

Mr. P.B. Patil, Advocate for the Petitioner
Smt. S.S. Raut, A.G.P. for respondents No.1 to 4
None present for respondent Nos.5 and 6 though served

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : 11th OCTOBER, 2017

ORAL JUDGMENT : PER – SUNIL P. DESHMUKH, J)

Heard Mr. P.B. Patil, learned counsel for the petitioner and Smt. S.S. Raut, learned A.G.P., representing respondents No. 1 to 4.

2. It is the case of the petitioner that he had been appointed as Assistant Teacher by respondent No. 5 on 25th June, 2001. Petitioner being a Scheduled Caste category candidate and there being a vacancy for Scheduled Caste, he was appointed in the post reserved and sanctioned for that category. His said appointment had been approved temporarily upto 30th April, 2002. Despite petitioner being in service as assistant teacher, purportedly, subsequently an order came to be issued on 17th April, 2003, whereunder in the appendix thereto, his appointment has been referred to as that of "*Shikshan Sevak*" from 17th June, 2002 to 16th June, 2005.

3. Learned counsel for the petitioner, as such, contends, petitioner could not be considered as *Shikshan Sevak* based on communication dated 3rd October, 2002. He submits said communication would not be able to arrest

petitioner's appointment as Assistant Teacher. Petitioner had been appointed long before the so called policy claimed to be appearing under communication dated 3rd October, 2002. He contends that as a matter of fact, it cannot even be called a policy decision, it being an *adhoc* direction issued.

4. Learned counsel further submits that such an order causes invidious discrimination. One Mr. S.U. Dasare, had been appointed as Assistant Teacher, a day prior to the so called policy and his appointment was approved as Assistant Teacher.

5. Learned counsel submits that subsequently, petitioner's appointment alongwith others across the State, had purportedly not been given approval to under order dated 17th December, 2005. He emphasizes that although this was the situation, the petitioner had been continuously serving and was in employment. He submits that the refusal to approve services of the petitioner alongwith others under order dated 17th December, 2005, had been re-considered under order dated 7/10-10-2006, wherein services of the petitioner alongwith others came to be regularised with effect from

the date of their initial appointment; however, with a rider that said employees would be receiving salaries from 1st October, 2006 onwards and would not be entitled to backwages.

6. He contends that it is not a case that the petitioner can be said to have been illegally appointed. He had been appointed after following due procedure as envisaged in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, also applicable to Ashram Schools. In such a case, the petitioner was entitled to the salary for the period for which he has worked as Assistant Teacher and the order dated 17th December, 2005, refusing to approve his services, would not be legally sustainable. In such a case, the petitioner's claim for salary for the period he had been working before 1st October, 2006, is legitimately due and payable to him as Assistant Teacher. Learned counsel refers to the decision in *Writ Petition No. 8176 of 2006 (Vithal s/o Rambhau Yeole Vs. The State of Maharashtra and others)*,

7. Learned A.G.P. Ms. Raut submits that appointment of the petitioner being after following due

procedure, may not be borne out from the documents annexed to the petition. His appointment not being regular, approval had been refused to him. He had not been aggrieved and as such, had not challenged said order. Subsequently, the State Government, in larger interest of the similarly situated persons, had reconsidered said decision and issued order dated 7/10-10-2006 and specifically referring to that as a special case the earlier decision had been reconsidered and also to that backwages would not be payable. She submits that prayers made in the petition do show that even said part of the order is not under challenge. She submits that for the period prior to the date referred to in the decision, salary is not liable to be paid from the Government coffers. In other cases as well, liability of salary has not been fastened on to the State Government. She points out that decision in *Writ Petition No. 8176 of 2006*, relied on behalf of petitioner, itself makes it clear that the State Government is not liable to pay the salary and accordingly, the Management had been directed to bear the claim of salary by the petitioner.

8. There is no dispute that petitioner initially

had been appointed as Assistant Teacher on 25th June, 2001. Petitioner's appointment order as *Shikshan Sevak* issued on 17th April, 2003 does not appear to be sustainable on facts since he indisputably had already earlier been appointed as Assistant Teacher. His claim to be in continuous service is not seriously disputed. Nor policy with respect appointment of *Shikshan Sevak* has been placed on record. Communication dated 3rd October, 2002 cannot be made use of to affect petitioner's appointment which is prior in point of time. Learned counsel for the petitioner has referred to on an order dated 1st October, 2002, which shows that the appointee Mr. S.U. Dasare had been considered as Assistant Teacher. The appointment of Mr. Dasare under order dated 1st October, 2002 as assistant teacher has been approved. Petitioner had been appointed long before on 25.06.2001.

9. In these circumstances, there is substance in the claim by the petitioner that he should be considered as Assistant Teacher from the date of his appointment under order dated 25.04.2001. The petitioner's claim to be considered as Assistant Teacher all through since the date of his initial appointment on 25th June, 2001,

appears to be legitimate and proper.

10. In the circumstances, we consider that the difference of pay would be legitimately payable to the petitioner considering him as Assistant Teacher, for the period during which he had been considered to *Shikshan Sevak*.

11. In view of above and as primary liability of making payment of salary and other benefits being that of Management, we deem it appropriate to follow the order passed in Writ Petition No. 8176 of 2006 on 14th March, 2008.

12. In the circumstances, respondents No. 5 and 6 shall pay salary to the petitioner as Assistant Teacher from 16th June, 2002 to 16th June, 2005 and from 17th June, 2005 to 30th September, 2006. Respondents No. 5 and 6 should pay the difference of salary if the salary is already paid to the petitioner as *Shikshan Sevak* during the said period. It is expected that respondents No. 5 and 6 would pay the dues of the petitioner within three months from the date of receipt of writ of this order.

13. The Writ Petition is disposed of accordingly. No costs.

14. In view of disposal of Writ Petition, Civil Application No. 6991 of 2017, for fixing date for early hearing of the petition, does not survive and stands disposed of.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE