

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

WRIT PETITION NO.4000 OF 2004

Ashok s/o Satram Honmane
Age 34 years, Occu. Service,
R/o At Post : Tadkalas, Tq. Purna,
District Parbhani

... PETITIONER

VERSUS

- 1) The State of Maharashtra
School Education Department,
Mantralaya Vistar Bhavan,
Mumbai, through its Secretary
(Copy to be served on G.P.,
High Court of Bombay,
Bench at Aurangabad)
- 2) Education Officer (Secondary),
Zilla Parishad, Parbhani
- 3) Ganga Shikshan Prasarak Mandal,
Gorakshan Road, Parbhani,
Tq. and Dist. Parbhani
through its President
- 4) Yeshwant Madhyamik Vidyalaya,
Sadegaon, Tq. & Dist. Parbhani
through Head Master. ... RESPONDENTS

.....
Shri R.J. Godbole, Advocate for petitioner
Mrs. M.A. Deshpande, A.G.P. for respondents No.1 & 2
Shri S.R. Barlinge, Advocate for respondents No.3 & 4
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CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 27th September, 2017

Date of pronouncing judgment : 5th October, 2017

JUDGMENT (PER R.D. DHANUKA, J.):

1. By this Writ petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari and appropriate writ for quashing and setting aside the order dated 6.12.1999, passed by the Education Officer (Secondary), Zilla Parishad, Parbhani cancelling the alleged approval order dated 11.11.1999, alleged to have been granted in favour of the petitioner. The petitioner also seeks a mandatory order against the respondent No.2 to recognize and to accord an approval in favour of the petitioner as Physical Education Teacher w.e.f. 14.6.1999 and to pay salary to the petitioner w.e.f. 14.6.1999 till the date of petition jointly or severally as per Vth Pay Commission. Some of the relevant facts for the purpose of deciding this Writ Petition are as under :

2. The petitioner is B.A. M.P.Ed. Respondent No.4 is a school, namely Yashwant Madhyamik Vidyalaya at Sadegaon, which was a recognized and aided school. It is the case of the petitioner that he was appointed as Physical Education Teacher by the school of respondents No.3 and 4 on 4.6.1999 w.e.f.

14.6.1999 on probation for two years according to the provisions of the Maharashtra Employees of Private schools (Conditions of Service) Regulation Act, 1977. It is the case of the petitioner that, the appointment order was in the custody of the respondent No.4 and was not physically served on the petitioner. It is the case of the petitioner that the Education officer accorded an approval to the appointment of the petitioner as Physical Education Teacher on 11.11.1999.

3. The petitioner has alleged to have worked as Physical Education Teacher in the school of the respondent No.4 satisfactorily during the probationary period. The respondent no.3 thereafter resolved to transfer the place of school from Sadegaon to Tadkalas after obtaining permission from State Government. It is the case of the petitioner that the respondent no.2, in his letter dated 20.4.2000, specifically observed that, the teachers working in Sadegaon School would be accommodated in the school situated in Tadkalas. According to the petitioner, there were total 10 employees working in the school at Tadkalas prior to the shifting of the school from Sadegaon to Tadkalas. It is the case of the petitioner that the petitioner accordingly started performing his duties at Tadkalas in the school namely Yeshwant Madhyamik Vidyalaya, Tadkalas, District Parbhani.

4. Some time in the year 2000, the inhabitants of

Tadkalas filed a Writ Petition No.2889/2000 in this Court challenging the validity of the order passed by the State Government allowing the respondent No.3 to transfer the school from Sadegaon to Tadkalas. Pursuant to an interim order passed by this Court in the said Writ Petition, the respondent No.2 has alleged to have inspected the school at Tadkalas and found the name of the petitioner at Sr.No.2 on the date of his visit. The name of the petitioner is reflected in the said report dated 21.2.2002.

5. By an order dated 26.2.2003, this Court allowed the said Writ Petition no.2889/2000 filed by some of the inhabitants of Sadegaon and was pleased to set aside the order dated 20.4.2000 passed by the State Government, granting permission to the management to transfer the said school from Sadegaon to Tadkalas. This Court directed the management to take steps to close down its school at Tadkalas and not to run the said school in the coming academic years unless it had been granted fresh permission by the competent authority. By a letter dated 25.3.2003, the petitioner requested the management to allow him to resume duty in the said Yeshwant Madhyamik Vidyalaya, Sadegaon followed by various other letters to the management to allow him to join as Physical Education Teacher in the said school.

6. It is the case of the petitioner that, some unknown persons took signatures of the petitioner on 16.9.2003 on various blank papers. The petitioner, therefore, lodged a complaint against respondent No.3. It is the case of the petitioner that, the respondent No.3 thereafter terminated the services of the petitioner vide letter dated 17.9.2003. The petitioner, therefore, challenged the said order by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal at Aurangabad. By an order and judgment dated 21.1.2008, the School Tribunal, Aurangabad dismissed the said appeal filed by the petitioner. The petitioner had filed a Writ Petition in this Court, thereby impugning the said order and judgment dated 21.1.2008 passed by the School Tribunal. The said Writ Petition, however,, is dismissed for non-compliance of office objections. The said order dated 21.1.2008 was passed by the School Tribunal during the pendency of this Writ Petition. Application filed by the petitioner for restoration of the said Writ Petition is pending.

7. It is the case of the petitioner that, he thereafter came to know that the approval granted to the appointment of the petitioner was cancelled by the Education Officer, Zilla Parishad, Parbhani. The petitioner addressed a letter to the

Education Officer (Secondary), Zilla Parishad, Parbhani, demanding a copy of the cancellation of the approval letter. The petitioner sent a reminder to the Education Officer on 9.2.2004. It is the case of the petitioner that the Education Officer thereafter on 16.4.2004, produced a copy of the letter dated 3.4.2004, annexing a copy of letter cancelling the approval of the appointment of the petitioner. The said order was dated 6.12.1999. Being aggrieved by the said order dated 6.12.1999, the petitioner filed this Writ Petition, interalia praying for quashing and setting aside the said order and for various reliefs.

8. Mr. Godbole, learned counsel for the petitioner invited our attention to some of the annexures to the petition and more particularly to the letter of approval dated 11.11.1999, purporting to approve the appointment of the petitioner and other teachers. He submits that, by the said approval order dated 11.11.1999, the appointment of the petitioner was not only approved but the petitioner was also granted powers to sign the pay bills for the period 14.6.1999 to 31.12.1999. It is submitted by the learned counsel that the petitioner had worked in the respondent No.4 school as Physical Training Teacher and was confirmed on completion of the probation period.

9. Learned counsel for the petitioner invited our attention to the inspection report dated 21.2.2002 submitted by

the Education Officer (Secondary), Zilla Parishad, Parbhani and would submit that, when the Education Officer had visited the school at Tadkalas pursuant to an interim order passed by this Court, the Education Officer had found the petitioner present in the school premises at Tadkalas. In the said report, the Education Officer had also mentioned the date of the appointment of the petitioner as 14.7.1999. He submits that, at the bottom of the said report, it is clearly mentioned by the Education Officer (Secondary) that the said report was prepared after considering the admission register, school leaving certificate, attendance register.

10. It is submitted that since the petitioner was already working in the respondent no.4 school as is apparent from the report submitted by the Education Officer (Secondary), and his appointment was already approved by the Education Officer (Secondary), the approval granted to his appointment could not have been cancelled by the Education Officer without any notice and without rendering an opportunity of being heard to the petitioner and merely on the basis of the complaints made by some of the teachers or even otherwise. He submits that, the impugned order thus passed by the Education Officer (Secondary) is in gross violation of principles of natural justice. In support of this submission, learned counsel placed reliance on

the judgment of this Court in case of **Shri Mali Deepak Nagnath & anr. Vs. The State of Maharashtra through Secretary, Education Department & ors. [2015 SCC OnLine Bom. 3983]**.

11. Mrs. M.A. Deshpande, learned A.G.P. for respondents No.1 and 2, on the other hand, invited our attention to the alleged approval letter dated 11.11.1999, annexed at Exhibit A to the petition and would submit that, the said letter/ alleged sanction was never issued to the petitioner. She also invited our attention to the order issued by the Education Officer, dated 6.12.1999, thereby cancelling the alleged sanction letter dated 11.11.1999. It is submitted that the petitioner had misused his position as a Secretary of the educational trust i.e. Ganga Shikshan Prasarak Mandal, the respondent No.3 herein, and prepared a proposal for approval of his own appointment and had misled the office of the Education Officer (Secondary), Zilla Parishad, Parbhani. The Education Officer had accordingly prepared a draft proposal dated 11.11.1999 for personal approval of the petitioner for forwarding the said proposal to the Secretary/ Head Master of the respondent No.4 School, in which the name of the petitioner was shown as Assistant Teacher, (Physical Education).

12. It is submitted that, on 4.12.1999, the Head Master

and the other employees of the respondent no.4 school made a complaint to the Education Officer (Secondary) against the petitioner informing that the petitioner had forwarded the personal proposal for approval of his appointment without having any authority and had threatened the teaching and non-teaching staff working in the school. She submits that, pursuant to the said complaint received from the Head Master and the other employees of the respondent No.4, the said draft proposal of personal approval dated 11.11.1999 was cancelled by the Education Officer (Secondary). She submits that, no personal approval for the appointment of the petitioner was ever granted. The Education Officer has only prepared a draft proposal of personal approval and the same was also cancelled after receiving the complaint dated 4.12.1999 from the Head Master and the other employees of the respondent No.4.

13. It is submitted that since the said proposal was submitted by the petitioner by misusing his position as a Secretary of the respondent No.3, no sooner the same was noticed by the Education Officer, the said draft proposal was immediately cancelled. The question of giving any hearing to the petitioner did not arise. She submits that, no rights were accrued or vested in favour of the petitioner based on such draft proposal made by the petitioner for approval of his personal

appointment which was never granted by the Education Officer (Secondary).

14. It is submitted by the learned A.G.P. that the appointment of Balasaheb Pandharinath Deshmukh had been approved by the Education Officer (Secondary) on 22.9.2000. The said approval granted by the Education Officer was not interfered with by this Court in Writ Petition No.2376/2008 which was filed by this petitioner. Learned A.G.P. invited our attention to various observations made and strictures passed by the School Tribunal in the judgment dated 21.1.2008 while dismissing the Appeal No.110/2006 filed by the petitioner before the School Tribunal. She submits that the School Tribunal has rendered a finding of fact that the petitioner had not produced any appointment order. He was the then Secretary of the school management. She submits that, the Writ Petition filed by the petitioner against the said order and judgment, delivered by the School Tribunal has been admittedly dismissed, though may be for default. The said order and judgment of the School Tribunal has thus attained finality.

15. The learned A.G.P. distinguished the judgment of the Division Bench of this Court in Shri Mali Deepak (supra) on the ground that since the petitioner was not even appointed nor his appointment was ever approved by the Education Officer, the

question of any hearing to the petitioner before cancellation of the alleged approval did not arise.

16. Mr. Barlinge, learned counsel for respondents No.3 and 4 invited our attention to the affidavit-in-reply dated 21.8.2017 filed by his clients and also the annexures thereto. It is submitted by the learned counsel that, this Court has allowed the Writ Petition No.2389/2000, which was filed by some of the inhabitants challenging the transfer of the school from Sadegaon to Tadkalas. He submits that, there was no school at Tadkalas legally recognized and thus, even if some inspection report was prepared showing the name of the petitioner at Tadkalas school, the said report would not create any right or interest in favour of the petitioner. He submits that, Mr. Balasaheb Pandharinath Deshmukh was appointed as non-trained teacher in the respondent No.4 school in the year 1995 and his name appeared at Sr.No.3 in the annual inspection report of the said year and even in the subsequent annual reports. He submits that the said Mr. Balasaheb Deshmukh was sent for training for B.P. Ed. On 12.7.1999 and he had completed his course in the year 2000. On 22.9.2000, the said Mr. Balasaheb Deshmukh was appointed as a regular teacher in the respondent No.4 school. Various documents annexed to the affidavit-in-reply in support of this submission are annexed.

17. It is submitted by the learned counsel that the School Tribunal has passed a detailed judgment and order dated 21.2.2008, thereby dismissing the appeal filed by the petitioner. It is submitted that, the petitioner was never appointed in the respondent No.4 school. It is submitted by the learned counsel that the petitioner has not been able to produce before this Court any letter of appointment appointing him as Physical Training Teacher or showing payment of any salary. He submits that, the entire petition is totally frivolous and full of false and misleading statement. This Court, thus, shall dismiss the Writ Petition with exemplary costs.

18. Mr. Godbole, learned counsel for the petitioner, in rejoinder, submits that, the petitioner has already filed a Civil Application in the said Writ Petition which was filed by him for impugning the order and judgment delivered by the School Tribunal, for restoration of the said Writ Petition which came to be dismissed for default and the said Civil Application is pending. He submits that this Court, thus cannot consider the observations, if any, made by the School Tribunal in the said order and judgment of the School Tribunal.

19. It is submitted by the learned counsel that, the letter of appointment of the petitioner was retained by the

management in their custody and was not issued. He submits that, similarly, the proof of payment of salary also is with the respondents No.3 and 4 and was not given to the petitioner. He submits that, the respondents No.3 and 4, on the contrary, ought to have produced the said proof of the appointment of the petitioner, about the salary which was paid to the petitioner and also the proof of the petitioner joining the duty and working in the school for more than two years. He submits that, the judgment delivered by the Division Bench of this Court in case of Shri Mali Deepak (supra) would squarely apply to the facts of this case and is binding on the respondents. He submits that the fact that the Education Officer (Secondary) has cancelled the approval granted by him on 11.11.1999 itself presupposes that the appointment of the petitioner was approved by the Education Officer (Secondary) and thus, the Education Officer (Secondary) cannot be allowed to contend that the petitioner was never appointed in the respondent No.4 school or that his appointment was never approved by the Education Officer (Secondary).

REASONS AND CONCLUSIONS

20. It is not in dispute that, at the relevant time when the proposal for approval of the appointment of the petitioner was forwarded to the Education Officer (Secondary), by the petitioner, the petitioner was the Secretary of the respondent

no.3. Though this Court has repeatedly called upon learned counsel for the petitioner to produce a copy of the appointment letter or any other proof to show that the petitioner was working in the respondent No.4 school, in any capacity whatsoever, and to show whether any salary or any other honourarium was paid to him from the date of his alleged appointment till his termination, the learned counsel for the petitioner could not produce any such document or proof of receipt of payment of salary by contending that those documents are not with him but are with the management. The only document vehemently relied upon by the learned counsel for the petitioner is the report submitted by the Education officer (Secondary), dated 20.4.2000 showing his name at Sr.No.2 in the school situated at Tadkalas.

21. The petitioner was never appointed as Physical Education Teacher in Yashwant Madhyamik Vidyalaya, Sadegaon. Mr. Balasaheb Pandharinath Deshmukh was appointed as an untrained teacher in the said school in the year 1995 and his name had appeared in the annual inspection report at Sr.No.3. His name was also reflected in the subsequent annual inspection reports. He was sent for B.P. Ed. training on 12.7.1999 and had completed his course in the year 2000. He was appointed as regular teacher on 22.9.2000.

22. Be that as it may, the said report of the Education

Officer (Secondary) was in respect of the school at Tadkalas. In our view, the said report is ex facie contrary to the record of these proceedings produced by the management and also by the petitioner and would not advance the case of the petitioner.

23. A perusal of the judgment dated 21/1/2008 delivered by the School Tribunal clearly indicates that the School Tribunal has totally disbelieved the story of the petitioner while dismissing his appeal. The School Tribunal has also considered the evidence produced before it by the parties. The School Tribunal observed that, though the petitioner herein had claimed in his appeal memo that he had been appointed as Physical Education Teacher, in the joining report dated 14.6.1999, he has been shown to have been appointed as Head Master and had resumed duties of the Head Master. It was not the case of the petitioner that he had joined the duties as a Head Master. It is held that since the petitioner was not having five years experience or requisite qualification to hold the post of Head Master, he could not have held the said post of Head Master.

24. The petitioner had also pleaded before the School Tribunal that he had not been issued written appointment order and it was kept in custody of the school management. The School Tribunal observed that the petitioner was the then Secretary of the school management and, therefore, he was well

in a position to collect the said appointment order, but had intentionally not filed before the School Tribunal, which would have weaken his case.

25. The School Tribunal also considered the said so called report submitted by the Education Officer (Secondary) showing his name at the time of his visit in the school at Tadkalas and observed that there was no transfer order on the record to suggest that the petitioner was transfered to Tadkalas. He had also not made any grievance to the effect that he was reduced from the post of Head Master to Assistant Teacher. He also did not show any document showing that he had joined his duties at village Tadkalas. The Education Officer had thus shown the name of the petitioner at his own imagination.

26. The School Tribunal observed that the petitioner had not filed any muster roll, office business or any other relevant document to suggest his services with the respondents No.3 and 4. None of the employees working in the said school were supporting the case of the petitioner. The petitioner also did not deny the fact that in the year 1999 he had acted as a secretary of the school management. After considering various evidence on record, the School Tribunal has rendered a finding that the petitioner was nowhere appointed as an Assistant Teacher and has miserably failed to establish any right in his favour. He had

also never worked with the respondent No.4 school as a Physical Training Teacher. The Writ petition filed against the said order and judgment delivered by the School Tribunal has been dismissed for default as claimed by the petitioner.

27. Be that as it may, this Court directed the learned counsel for the petitioner to produce before this Court his letter of appointment, the transactions carried out by him as Head Master or in any other capacity during the alleged employment with the respondent No.4, the payment of salary, attendance register or any proof showing his appointment. The petitioner, however, is unable to produce even a single document. In these circumstances, it cannot be said that the petitioner was actually appointed in the respondent No.4 school as an Assistant Teacher or in any other capacity much less validly appointed. The petitioner has not disputed before this Court that he was the Secretary of the respondent No.3 management at the relevant time.

28. Insofar as the reliance placed by the petitioner on the approval dated 11.11.1999 is concerned, the petitioner could not produce any proof of acknowledgement of the said alleged approval order dated 11.11.1999. On the contrary, the record produced before this Court further indicates that, some of the employees whose names were mentioned in the said alleged

approval order, had themselves filed a complaint against the petitioner to the Education Officer (Secondary), contending that the petitioner had forwarded the personal proposal of approval without any authority and was threatening the teaching and non-teaching staff working in respondent No.4 school. When the Education Officer (Secondary) was apprised of the true and correct facts, he immediately cancelled the said proposal for personal approval of the petitioner for forwarding the same to the Secretary/ Head Master of the Yashwant Vidyalaya, Sadegaon. The said letter dated 11.11.1999 was a draft proposal of personal approval of the petitioner and other teachers. In our view, since the petitioner had misused his position as a Secretary of the respondent No.3 management and had sent his own proposal for approval of his appointment fraudulently, the Education Officer (Secondary) was fully empowered to cancel such draft approval prepared by him.

29. In our view, the powers of the Education Officer (Secondary) to grant approval to the appointment of an employee includes the power to revoke such approval if such approval was fraudulently obtained by any member of the staff. In these circumstances, the respondent No.2 was justified in revoking the draft proposal of approval of the appointment of the petitioner. The petitioner has even failed to prove that he was

ever appointed by the management in the respondent No.4 school. The respondents No.3 and 4 who have filed a detailed affidavit in these proceedings also have contended that the petitioner was never appointed to any of the post in the respondent No.4 school at any point of time. Several documents in support of their contention have been annexed to the affidavit-in-reply, which clearly indicates that the case of the petitioner is totally false and misleading.

30. Insofar as submission of the learned counsel for the petitioner that the fact that the respondent No.2 had issued an order of cancellation of the approval of the appointment of the petitioner presupposes that he was appointed to the said post of Assistant Teacher, which appointment was already approved is concerned, since the petitioner has miserably failed to produce any document in support of his case that he was actually appointed by the management and that his appointment was approved by the respondent No.2, there is no merit in this submission of the learned counsel for the petitioner. The said so called draft proposal of approval to the alleged appointment of the petitioner would not create any right or interest of any nature whatsoever in the petitioner. In our view, even if any such draft order of approval was prepared and found in the file of the respondent No.2 i.e. Education Officer (Secondary), since the

said draft proposal of the order was not communicated to the petitioner at any point of time, the same cannot be considered as a binding and valid order alleged to have been passed by the respondent No.2. No reliance thus, on such draft order in the file of the respondent No.2 could be placed upon by the petitioner as a binding order of approval.

31. Insofar as judgment delivered by this Court in case of Shri Mali Deepak (*supra*) relied upon by the learned counsel for the petitioner is concerned, there is no dispute about the proposition of law laid down by the Division Bench of this Court that the order of approval to the appointment cannot be cancelled without affording an opportunity of hearing. However, in this case, since the petitioner himself has not been able to produce any document to show that he was actually appointed or that his appointment was approved by the respondent No.2, the question of any hearing to the petitioner before cancelling such draft approval did not arise. The draft proposal of approval of the appointment of the petitioner was withdrawn after the fraud committed by the petitioner came to the notice of the respondent No.2. No such hearing was thus contemplated even otherwise for taking such action in law in view of the fraud committed by the petitioner.

32. In our view, the petition is totally devoid of merit.

We, therefore, pass the following order :

ORDER

Writ Petition No.4000/2004 is dismissed with costs quantified at Rs.25,000/- (Rupees twenty five thousand), which shall be paid by the petitioner to the respondent No.2 within two weeks from the date of this order, without fail. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

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