

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

WRIT PETITION NO. 10597 OF 2016

Bhagwan Dhanraj Pawar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri B. L. Sagar Killarikar, Advocate for the Petitioner.

Shri K. D. Mundhe, A.G.P. for Respondent Nos. 1 to 3, 6 and 7.

Shri K. D. Khade, Advocate for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 06TH OCTOBER, 2017.

FINAL ORDER :

. The petitioner assails the order dated 20th July, 2016 passed by the respondent No. 2 thereby refusing proposal seeking approval to the appointment of the petitioner.

2. Mr. Sagar Killarikar, the learned counsel for the petitioner submits that, after following due procedure, the petitioner was appointed on 01.01.2008 on clear sanctioned post meant for open category candidate. Under order dated 12th September, 2008, the appointment of the petitioner was approved by the Special District Social Welfare Officer, Aurangabad. The learned counsel

submits that, the said Ashram School was run by Spark Rural Development Education Society. As the said ashram school lacked the basic amenities, in January 2009, the said Spark Rural Development Education Society amalgamated with Kalavaibhav Multipurpose Charity Trust. Said amalgamation was approved by the Deputy Charity Commissioner under order dated 12.01.2009. The Social Justice Department did not accept the same and withheld the grants in aid. The writ petition was filed by the employees of the trust bearing Writ Petition No. 7810 of 2009 as the salary of the employees was withheld. This Court by an interim order directed the respondents therein to release the salary of employees. The respondent No. 4/management also filed Writ Petition No. 2477 of 2010 for release of grant in aid, under interim order dated 24.08.2010 this Court directed the respondents to release the grant in aid to Kalavaibhav Multipurpose Charitable Trust.

3. The learned counsel further submits that, the proposal for approval to the appointment of the petitioner was pending with the respondent. The same was not decided, as such the petitioner filed Writ Petition No. 2959 of 2013 seeking directions to decide the said proposal. This Court directed the respondents to decide the proposal within a period of eight weeks under order dated 10.06.2013. The said proposal was returned for the reason of approval pending to roster point. Thereafter, in September,

2014 administrative approval was granted to the amalgamation of trust under Government Resolution dated 11th September, 2014. In 2014 fresh proposal was submitted by the management seeking approval to the continuation of service of the petitioner. Under the impugned order said proposal is rejected on two counts (1) prior approval of the respondent is not obtained, (2) prevailing sanctioned posts are seven. The society has filled in six posts and one post remained is for S.C. category candidate. The learned counsel submits that, as per the roster, post is admissible for the petitioner. The management has filled in post for S.C. category candidate in the year 2010. Considering the strength of students and number of divisions, the Assistant Commissioner, Social Justice Department has also approved the staffing pattern. There are eight sanctioned posts that is one post for Head Master, one post for graduate teacher and six posts for assistant teachers. The learned counsel further submits that, position pertaining as on the date of appointment of the petitioner is required to be considered. According to the learned counsel, even on the date of appointment of the petitioner same position existed as it exists today. The respondent authority with malafide intention has passed the impugned order.

3. The learned counsel for the management supports the arguments of the learned counsel for the petitioner.

4. The learned Assistant Government Pleader submits that, before filling in the post, the institution had not taken any permission from the respondent authority. The petitioner was appointed by Spark Rural Development Education Society. No permission was granted by the authorities to amalgamate the said institution with Kalavaibhav Multipurpose Charitable Trust. The amalgamation itself was not approved. In view of that, the amalgamation is illegal. Subsequently in the year 2014 the authorities have approved the amalgamation. The post is not vacant for open category candidate. The roster point was not approved. Considering all these anomalies, the respondent authority has rightly refused approval to the appointment of the petitioner.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. It appears that, the petitioner is appointed under order dated 01.01.2008, when the Ashram School was run by the Spark Rural Development Education Society. It appears that, as per the permission granted by the Deputy Charity Commissioner dated 12.01.2009 said society was amalgamated with Kalavaibhav Multipurpose Charitable Trust. At the relevant time, there was no permission from the respondent authority for amalgamation of the said two societies. No such provision is also

pointed out to suggest that, such a permission from the authority is required to be obtained.

7. Be that as it may, all the other employees who were working with the said Ashram School, when it was under Spark Rural Development Education Society were continued even after amalgamation with the respondent No. 4 and they were all paid salaries pursuant to the interim orders passed in writ petition filed by them and their appointments are also approved in the year 2015 by the said authority. It is also observed that, under Government Resolution dated 11th September, 2014, the Government has also approved the said amalgamation. As such, the said reason for refusing the proposal seeking approval to the appointment would not survive.

8. It would be too late in the day, now for the respondent authorities to consider that, when in the year 2008 the petitioner was appointed, permission was not obtained. The said ground would not be available to the respondent authority as the appointment of the petitioner was made on 01.01.2008 and has been approved by respondent authority under order dated 12th September, 2008.

9. The other ground stated is about non availability of the post and that the said post was meant for S.C. category

candidate. The roster is relied by the learned counsel for the petitioner and the management to suggest that the post is meant for open category candidate. Said roster according to respondents is approved by the B. C. cell. As per the roster produced on record, there are eight posts admissible, four are meant for reserved category and four posts for reserved category candidate are filled in. As such it is not clear as to on what basis the authority has said that backlog of one S.C. category candidate exists. The said roster is attested by the respondent authority himself.

10. The reasons given for refusing the approval i. e. there was no permission for amalgamation or that there was no permission obtained at the time of appointment of the petitioner are not sustainable. The other reason given that of one post of Assistant teacher is meant for S.C. category candidate does not appear to be proper in view of the fact that, roster which is signed by the authority himself states that there is no backlog of reserved category candidate.

11. Considering the above, the impugned order is quashed and set aside. The respondent authority shall consider the proposal seeking approval to the appointment of the petitioner afresh and shall not reject it on the ground enumerated in the impugned order. The same shall be decided within a period of three (03)

months from today. The writ petition is partly allowed. No costs.

12. In case the petitioner's proposal is allowed, needless to state, the petitioner would be entitled for all consequential benefits arising thereof.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 17