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

WRIT PETITION NO.536 OF 2016

Gorakhnath s/o Rangnath Yadav,
Age: 40 years, Occu: Service,
R/o. Suzuki Show Room Building,
Near Water Tank, Vivekanand Nagar,
Majalgaon, Tq. Majalgaon,
Dist. Beed

..PETITIONER

VERSUS

1. The Divisional Deputy Commissioner,
Social Welfare Department, Aurangabad
Division, Aurangabad
2. Matoshri Ramabai Ambedkar Shikshan
Prasarak Mandal, Majalgaon, Dist. Beed,
Through it's President,
Shriram Vitthalrao Khalage,
Age: 57 years, Occu: Business,
R/o. Near City Police Station,
Fule Nagar, Majalgaon,
Tq. Majalgaon, Dist. Beed
3. Mukabadhir Niwasi Vidyalaya,
Kitti Aadgaon, Tq. Majalgaon,
Dist. Beed, run by Matoshri Ramabai
Ambedkar Shikshan Prasarak Mandal,
Majalgaon, Dist. Beed,
through it's Head Master,
Shaikh Sami Jafar,
Age: 35 years, Occu: Service,
R/o. Mukbadhir Niwasi Vidyalaya,
Kitti Aadgaon, Tq. Majalgaon,
Dist. Beed
4. The District Social Welfare Officer,
Zilla Parishad,
Dist. Beed

..RESPONDENTS

Mr S. J. Salunke, Advocate for petitioner;
Mr A. P. Basarkar, A.G.P. for respondent No.1;
Mr M.V. Salunke, Advocate holding for Mr V. D. Salunke, Advocate for
respondent Nos.2 & 3;
Mr A. D. Aghav, Advocate for respondent No.4

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CORAM : NITIN W. SAMBRE, J.**DATE : 25th September, 2017****ORAL ORDER:**

The present petitioner, having qualification of B.A., B.P.Ed., claims to have been appointed as Assistant teacher on 15th June, 2004 in respondent no.3 school managed by respondent no.2, which earlier was managed by one Vaishnodevi society. The case, as could be inferred from the impugned order is, that in 2008 actual transfer of the management took place from Vaishnodevi society to present respondents no.2 and 3.

2. It is an admitted position on record that the petitioner was issued appointment order for a period from 15th June, 2011 to 30th April, 2012 and his services for the said period were approved by respondent no.1-competent authority.

3. The petitioner thereafter came with an appeal before the appellate authority, making a grievance that he was appointed in 2004 and was not continued in the employment after the period of approval is over, i.e. from 30th April, 2012. The said appeal came to be dismissed by the appellate authority vide impugned order dated 18th May, 2015. Thus, the present petition.

4. Mr S.J. Salunke, learned Counsel appearing on behalf of the petitioner would urge that the appellate authority has lost sight of the fact

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that employment of the present petitioner is from 2004 as is reflected from the approval order dated 11th August, 2011. He would urge that the appellate authority, so also the authority which has granted approval have lost sight of the fact that his earlier appointment, particularly with the management – Vaishnodevi society from 2004 onwards was not brought to the notice of the appellate authority.

5. Per contra, learned Counsel appearing on behalf of respondents no.1, 2 and 3 supported the order impugned. It is brought to my notice by both learned Counsel, while contending strenuously that there is nothing wrong in the order of the appellate authority, the petitioner has failed to establish his claim by producing on record appointment order of 2004 appointing him from 15th June, 2004. It is further claimed that the management was taken over by respondents no.2 & 3 some time in 2008 and as such earlier record, particularly as regards appointment of petitioner from 2004 has to be borne out from his appointment orders and communications to that effect to the authority which had granted approval. The authority granting approval i.e. respondent no.1 has come out with an explanation that, by incorporating a clause in the approval order, that the petitioner was appointed in 2004, a clerical/typographical mistake was committed. According to both the Counsel, the order of the appellate authority does not call for any interference.

6. Though the order impugned passed by the appellate authority is after considering respective submissions made by the parties, still one aspect which this Court must take note of is, the appellate authority, merely

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for asking by respondent no.1, recorded findings that it was by virtue of typographical mistake, appointment of the petitioner is from 15th June, 2004. The said authority has not ascertained or examined the factual position from the record of respondents no.2 and 3 or for that matter the record of earlier management viz. Vaishnodevi society.

7. Learned Counsel appearing on behalf of respondents no.2 and 3 was right in pointing out that the petitioner should have produced copy of appointment order. However, once the authority granting approval in the order dated 11th August, 2011 has shown that the petitioner was appointed in 2004, it was expected of the appellate authority to call for the record, verify the same, including that of proposal for approval/earlier record of Vaishnodevi society appointing staff, the list of the staff which was working with Vaishnodevi society, the earlier management/the appointments, if any, carried out by respondents no.2 and 3 and whether all staff members of earlier management were continued or not.

8. What could be gathered from the submissions by respective Counsel and the record is, the appellate authority, without going into all these aspects, except accepting bare statement made by the authority granting approval as a true statement, particularly as regards the typographical mistake committed in mentioning the original appointment of the petitioner to be on 15th June, 2004, has not inquired into any other relevant and crucial aspects. At least no reasons to that effect are borne out of the impugned order.

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9. In my opinion, the appellate authority should have in chronology dealt with the events took place, which is reflected in the order impugned, which has prompted the authority to take decision as regards the status of the employee of the school and the earlier appointments, the subsequent appointments and the record pertaining thereto.

10. In the aforesaid background, the order impugned dated 18th May, 2015, is not sustainable being passed for the reasons which cannot be justified since not based on the material available on record.

11. Thus, the order impugned dated 18th May, 2015 is quashed and set aside. The appeal stands restored to the file of the appellate authority before whom the parties agree to appear on 30th November, 2017 with their written notes of argument along with documentary evidence, if any.

The appellate authority is expected of to decide the aforesaid appeal within a period of eight weeks from the date of appearance of the parties before it.

With above observations and directions, petition stands partly allowed.

(NITIN W. SAMBRE, J.)

amj