

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

WRIT PETITION NO. 11321 OF 2015

Manojkumar s/o. Murlidhar Karande .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.A.S. Shelke, Advocate for the petitioner.

Mr.R.B. Bagul, A.G.P. for respondent Nos.1 & 2.

Mr.H.P. Kshirsagar, Advocate for respondent No.3.

Mr.Milind Patil, Advocate for respondent No.4 & 5.

**CORAM : S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATED : 01.02.2017

P.C. :-

1. The proposal seeking approval to the appointment of the petitioner is rejected. Aggrieved thereby the present petition.

2. Mr.Shelke, learned Counsel for the petitioner states that the petitioner was appointed on 12.09.2005 by respondent No.5 as an Assistant Teacher. Respondent No.5 – School was initially run by Ramabai Mahila Mnadal. In the year 2007, the said school was transferred to respondent No.4. However, there was dispute with regard to the vacant post. In the year 2011, respondent Nos. 4 & 5 issued advertisement. The petitioner was already

working with respondent No.5. As such, again an appointment order was issued to the petitioner. In-fact, the petitioner is working with respondent No.5 since 12.09.2005. If said date is considered as the date of appointment, then the petitioner was not over-age. However, it is contended that the petitioner is working since 12.09.2007 and hence he is over-age. According to the learned Counsel, the documents on record received under the Right to Information Act show that since September, 2005, the petitioner is working as Assistant Teacher with respondent No.5. Said documents are not at all considered. According to the learned Counsel for the petitioner, the petitioner possessed D.I.T. qualification issued by Sagar University. The petitioner was admitted prior to 1993, as such circular dated 3rd September, 2001 issued by State of Maharashtra applies to the present petitioner and the petitioner would be protected.

3. Mr. Patil, learned Counsel for respondent Nos.4 & 5 submits that the appointment was made on regular basis in case of the petitioner in the year 2011, but as he was working from 2007, proposal was submitted for approval contending that the petitioner is working since 2007. Even in the year 2007, no post was vacant. Even other wise, the petitioner was on no-grant division. The learned Counsel submits that respondent No.5 came under

the management of respondent No.4 in the year 2007. All the documents submitted by the petitioner were forwarded to the Education Officer.

4. The learned Counsel for the Education Officer submits that there was no clarification issued that the petitioner was working since 2005. Even no proposal was received for relaxation of age from the management. The Block Development Officer was directed to conduct enquiry and it was submitted that the petitioner was working since 2007. As there was no proposal for relaxation of age, same cannot be granted. Learned Counsel further submits that even the petitioner was not possessing appropriate qualification. On both the counts the proposal is rightly rejected.

5. We have heard learned A.G.P. also.

6. We have gone through the documents placed on record. The documents purportedly received by the petitioner under the Right to Information Act show that the petitioner was working as Assistant Teacher since 2005 with respondent No.5. At the relevant time respondent No.5 was managed and run by Ramabai Mahila Mandal society and respondent No.5 is transferred to respondent No.4 in the year 2007. There is no dispute

that the petitioner is working since 2007 with the respondent-school. However, the only contention is about the period from 2005 to 2007. The extract of muster received under the Right to Information Act so also the civil list of teacher would show that the petitioner is working since 2005-2006. If same is considered, then it could not be said that the petitioner is over-age. Whether said division was admissible or not is not the subject matter to be considered while considering the age of the petitioner at the time of appointment. The documents on record unequivocally go to show that the petitioner seems to be working since 2005, as such well within the permissible age for appointment. Though the proposal is submitted seeking approval since 2007 for appointment, said aspect needs to be considered. The second ground raised of the petitioner not possessing appropriate qualification may not stand to reason in view of circular dated 3rd September, 2001, issued by the State, wherein it is stated that even those students who have taken admission prior to 1993, their degree is protected. The petitioner has taken admission in 1992 as would be clear from the mark-sheet annexed to the petition.

7. In the light of above, we pass following order:-

i) The impugned order is quashed and set aside. It is held that the petitioner was possessing the qualification. The qualification be protected in view of circular dated 3rd September, 2001 and the petitioner was within the age when he was appointed in 2005. The Education Officer shall consider the proposal seeking approval to the appointment of the petitioner since the year 2007, considering the petitioner to be within age and considering aforesaid facts even if it is found that the petitioner was over age by few months, same stands relaxed. The decision on the said proposal shall be taken in view of observations made above expeditiously and preferably within four months. Apart from the issue we have discussed above, we have not considered any other issue.

8. The writ petition is accordingly disposed of.
No costs.

[K.L.WADANE, J.]

[S.V.GANGAPURWALA, J.]