

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3520/2015

Suresh Ganeshrao Kale

...Versus...

Zilla Parishad, Buldhana, through its Chief Executive Officer and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri G.G. Mishra, Advocate for respondent nos.1 and 2
Shri N.A. Jachak, Advocate for respondent no.3
Shri N.B. Kalwaghe, Advocate for respondent nos.5 & 6

**CORAM : SMT. VASANTI A NAIK AND
V.M. DESHPANDE, JJ.**

DATE : 06.02.2017

None appeared for the petitioner when the writ petition was called in the morning session. None appears for the petitioner in the afternoon session. The matter was adjourned from time to time at the request of the learned Counsel for the petitioner.

By this petition, the petitioner seeks a direction against the respondent nos.1 and 2 to give effect to the appointment of the petitioner from 30.10.2007 and to grant continuity to his services with effect from the said date.

The respondent – Zilla Parishad had issued an advertisement inviting applications from the candidates interested in seeking appointment to the posts of Shikshan Sevaks. The

petitioner and the respondent no.3 were appointed as Shikshan Sevaks by the Zilla Parishad by the order dated 30.10.2007 as they were the most meritorious candidates. The appointment of the petitioner and the respondent no.3 - Smt. Anita Shinde was challenged by the respondent nos.5 and 6 before the Grievance Committee. On the basis of the Division Bench Judgment of this Court holding that the appointment to the post reserved for the project affected persons should be made as per seniority, in the list maintained by the Collector, the appeal filed by the respondent nos.5 and 6 before the Grievance Committee was allowed. The services of the petitioner and Smt. Anita Shinde were terminated. After the termination of the services, the petitioner and Smt. Anita Shinde approached the Grievance Committee against the cancellation of their appointments. The Grievance Committee on the basis of another judgment, that was subsequently rendered, holding that the appointment should be made as per merit from the project affected candidates, allowed the appeal filed by the petitioner and Smt. Anita Shinde. The order of the Grievance Committee in the case of the petitioner and Smt. Anita Shinde was challenged by the respondent nos.5 and 6 in Writ Petition No.1095/2014. In the said writ petition, Smt. Anita Shinde and the petitioner were joined as party respondents. This Court quashed the notice of termination that was served by the Zilla Parishad on the respondent nos.5 and 6 by the order dated 7.11.2014. While disposing of the said writ petition to which the petitioner was also a party, this Court held that if a vacancy still exists, the Zilla Parishad may appoint the petitioner and Smt. Anita Shinde as Shikshan Sevaks from the

category of the project affected persons. The Court however observed that the permission to appoint the petitioner and Smt. Anita Shinde was granted in the peculiar circumstances and the Court was not laying down a binding precedent. The show-cause-notices issued against the respondent nos.5 and 6 were set aside by this Court and while partly allowing the writ petition filed by the respondent no.5 and 6, the Zilla Parishad was permitted to appoint the petitioner and Smt. Anita Shinde as Shikshan Sevaks, if there was any vacancy. Since there were two vacancies, the Zilla Parishad appointed the petitioner and Smt. Anita Shinde on the posts of Shikshan Sevaks by the order dated 8.1.2015. The petitioner is aggrieved by the appointment order dated 8.1.2015 as the petitioner claims that his appointment is made on 30.10.2007 and he should be granted continuity of service.

The learned Counsel for the Zilla Parishad states that despite the service of the appointment order dated 8.1.2015 on the petitioner, the petitioner has not joined the services as a Shikshan Sevak till date. It is stated by referring to the affidavit-in-reply that though the petitioner is appointed as a Shikshan Sevak, the petitioner has failed to join his duties. It is stated that the petitioner has not joined the duties as a Shikshan Sevak even under protest and it is apparent that the petitioner is not desirous of joining the duties and is only desirous of seeking the arrears of salary for the period from the date of his initial appointment till the order of appointment is passed in the year 2015.

On hearing the learned Counsel for the respondents and on a perusal of the orders passed by the Grievance Committee

and this Court in Writ Petition No.1095/2014, it appears that the relief sought by the petitioner cannot be granted. It is unfortunate that due to the change in law from time to time, the petitioner could not work on the post of Shikshan Sevak after his services were terminated in pursuance of the order passed by the Grievance Committee in the appeal filed by the respondent nos.5 and 6. The services of the petitioner were terminated some time after his appointment in view of the law, that was laid down at that time. Though the Grievance Committee had passed an order in favour of the petitioner and Smt. Anita Shinde in the appeal filed by the petitioner, the said order did not fructify in view of the pendency of the writ petition, bearing Writ Petition No.1095/2014 and the interim order passed therein, on 28.2.2014. The respondent nos.5 and 6 had continuously worked as Shikshan Sevaks for three years from 2008 and they have attained the status of an Assistant Teacher after the completion of services as Shikshan Sevaks for three years. By the order dated 7.11.2014, this Court had permitted the Zilla Praishad to appoint the petitioner and Smt. Anita Shinde from the Project Affect Persons Category if there were vacancies in the posts of Shikshan Sevaks. While so directing, we had observed that we were not laying down any binding precedent. By following the orders of this Court in Writ Petition No.1095/2014, it appears that the Zilla Parishad has appointed the petitioner and Smt. Anita Shinde on the posts of Shikshan Sevaks. Though the order of appointment is served on the petitioner in the month of January 2015, the petitioner has not joined the services as a Shikshan Sevak even under objection. Even while filing this writ petition the petitioner

could have joined the services as a Shikshan Sevak and could have sought the continuity of services from the date on which he was initially appointed. The petitioner, however, failed to do so. More than two years have lapsed from the date of issuance of the order of appointment dated 8.1.2015. The petitioner was a party to the writ petition filed by the respondent nos.5 and 6 and by the order in the said writ petition, as a special case and without laying down any binding precedent, the Zilla Parishad was asked to appoint the petitioner and Smt. Anita Shinde only if there was a vacancy in the Zilla Parishad. In this background, specially in view of our order in Writ Petition No.1095/2014, it cannot be said that the Zilla Parishad committed an error in appointing the petitioner on the post of Shikshan Sevak with effect from the date of his appointment, on 8.1.2015. The case of the respondent – Zilla Parishad that the petitioner is probably not interested in his appointment but is only interested in seeking the arrears of salary from the Zilla Parishad appears to be correct as the petitioner has not joined on the post of Shikshan Sevak, even under protest.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE