

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5120/2016

(Shri Krunal s/o Vijay Gharde vs. State of Maharashtra and others)

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

Court's or Judge's order

Shri I.N.Choudhari, Advocate for the petitioner
 Smt. A.R.Taiwade, Assistant Government Pleader for respondents 1 and 2
 Shri A.D. Mohgaonkar, Advocate for Respondent nos. 3 and 4

**CORAM : SMT. VASANTI A. NAIK &
 MRS.SWAPNA JOSHI, JJ.**

DATED : 10th April, 2017.

By this Writ Petition, the petitioner seeks a direction against the Education Officer to grant approval to the appointment of the petitioner on the post of *Shikshan Sevak* from 01.5.2012 to 30.04.2015 and thereafter on the post of Assistant Teacher. The petitioner seeks a direction against the respondents to pay the arrears of honorarium to the petitioner.

According to the petitioner, in pursuance of an advertisement issued by the respondent no.3, for appointment to the post of *Shikshan Sevak*, dated 13.04.2012, the petitioner applied for the said post. The petitioner claims that an appointment order was issued in favour of the petitioner on 01.05.2012. Though the applications were made by the petitioner to the Education Officer from time to time for granting approval to the appointment of the petitioner on the post of *Shikshan Sevak*, the Education Officer did not grant the approval. The petitioner has therefore filed this Writ Petition seeking a direction against the

Education Officer to grant approval to his appointment and to pay the arrears of honorarium to him.

Shri Choudhari, the learned counsel for the petitioner submitted that the Education Officer is not justified in refusing to grant approval to the appointment of the petitioner on the ground that in pursuance of the resolution dated 02.05.2012, there was a ban on making fresh appointment until the excess surplus teachers were absorbed. It is submitted that there was a clear vacancy in the post of *Shikshan Sevak* in which the petitioner was appointed. It is submitted that it is apparent from the communication issued by the Education Officer, Gondia to the State Government, dated 04.10.2016 that workload was available for appointment of *Shikshan Sevak* in the year 1992 and a post of *Shikshan Sevak* was vacant at the relevant time.

Mrs. Taiwade, the learned Assistant Government Pleader appearing for the Education Officer submitted that by the Government Resolution, dated 2nd May 2012, the State had imposed a ban on fresh appointment until the excess surplus teachers were absorbed in the School. It is submitted that on a public holiday ie, 1st May 2012, (May Day), surprisingly, an appointment order is issued in favour of the petitioner. It is submitted that the appointment order is shown to have been issued on 01.05.2012 merely with a view to overcome the Government Resolution. It is stated that in the year 2012, there was no vacancy in the post of *Shikshan Sevak* and, as on this date, there are surplus teachers in the School run by the respondent no.4 and, therefore, the Education Officer has refused to grant approval to the appointment of the petitioner as *Shikshan Sevak*.

Shri Mohgaonkar, the learned counsel for the respondent nos. 3

and 4 submitted that the appointment order was not issued by the management but was issued by the Secretary in favour of the petitioner, with a view to accede to his request of gaining some experience as a teacher. It is submitted that at the relevant time there were only eight posts earmarked for the middle school teachers and all the eight posts were duly filled. It is submitted that there was no vacancy in the post of *Shikshan Sevak* in the middle School at the relevant time. The learned counsel referred to the affidavit-in-reply filed on behalf of the respondent nos. 3 and 4 to point out the names of the teachers that were serving in the middle School at the relevant time. It is submitted that though the petitioner claims to have been appointed on 01.05.2012, the name of the petitioner did not appear in the muster roll till June 2012 and the name of the petitioner does not appear in any of the muster rolls from May 2015 onwards. It is submitted that since there are surplus teachers in the school run by the respondent no.3, the Education Officer has rightly refused to grant approval to the appointment of the petitioner.

On hearing the learned counsel for the parties, it appears that a direction cannot be issued against the Education Officer to grant approval to the appointment of the petitioner in the circumstances of the case. We find, on a perusal of the documents on record, especially the staff justification for the year 2012, dated 23.08.2012, that there were only eight posts earmarked for the middle School teachers and all the eight of them were filled. It appears that there were no vacancy in the post of *Shikshan Sevak* in the year 2012 when the petitioner was appointed. Also, there is some force in the submission made on behalf of the Education Officer that the appointment order seems to have been issued in favour of the petitioner on a public holiday i.e. on 1st May 2012, with a view to overcome the policy of the State Government in

the Resolution dated 2nd May 2012, that banned fresh appointment in the schools unless the surplus teachers are accommodated. Merely because, the Education Officer had written to the Government vide communication dated 04.10.2012 whether approval could be granted to the appointment of the petitioner, it cannot be said that this is a fit case for granting approval to the appointment of the petitioner. Since we find that there was no vacancy in the post of *Shikshan Sevak* at the relevant time when the petitioner was appointed, a direction cannot be issued against the Respondent-Education Officer to grant approval to the petitioner's appointment. The judgment reported in 2016 (5) Mh.LJ. 480: { Dadasaheb Shinde vs. State of Maharashtra} and relied on by the learned counsel for the petitioner cannot be made applicable to the case in hand. In the instant case, it appears that there was no vacancy in the post of *Shikshan Sevak* in the School run by the respondent no.3 and the appointment of the petitioner appears to have been shown to have been made on 01.05.2012, only with a view to overcome the effect of the Government Resolution dated 02.05.2012. In the judgment reported in 2016(5) Mh.L.J. 480 (supra), the appointment was made on 14.06.2011, that is much before the Government Resolution was passed on 02.05.2012.

However, since we find that the petitioner must have been working with the respondent nos.3 and 4, at least for some time, it would be necessary for the management to pay the arrears of honorarium to the petitioner for the period during which he had worked, if the same is not paid to him.

Hence, we dispose of the Writ Petition, with a direction against the respondent nos.3 and 4 to pay the arrears of honorarium to the petitioner for the period during which he had worked on the

post of *Shikshan Sevak*, if not paid.

Order accordingly. No costs.

JUDGE

JUDGE

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