

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO. 2233 OF 2013

Sachin Suresh Andure,
Age: 28 years,
Occupation : Shikshan Sevak,
Residence of Post Maka,
Taluka Newasa,
District : Ahmednagar

PETITIONER.

VERSUS

- 1) The State of Maharashtra,
School Education Department,
Mantralaya Mumbai.
- 2) Chief Executive Officer,
Zilla Parishad, Ahmednagar.
- 3) Education Officer (Primary)
Zilla Parishad, Ahmednagar.
- 4) Zilla Parishad Primary School,
At Post Thakarvadi (Vankute),
Taluka Parner, Dist. Ahmednagar.

RESPONDENTS

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Shri R.J. Godbole, Advocate for Petitioner.
Shri Y.G. Gujarathi, A.G.P. for Respondent No. 1.
Shri S.T. Shelke, Advocate for Respondent No. 3.
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CORAM: **T.V. NALAWADE AND**
 SUNIL K. KOTWAL, JJ.

DATED : **23rd April, 2018**

JUDGMENT: (Per Sunil K. Kotwal J.)

1) Rule. Rule made returnable forthwith. Heard finally by the consent of both the parties.

2) The petitioner who works as “Shikshan Sevak” in respondent no. 4, Zilla Parishad Primary School, Post Thakarwadi (Vankute), has filed this writ petition for direction to respondent no. 2 Chief Executive Officer, Zilla Parishad, Ahamadnagar to confirm the services of the petitioner as Assistant Teacher w.e.f. 05/05/2010 with continuity of service treating his date of appointment as 22/11/2006 for direction to pay arrears of salary w.e.f. 05/05/2010 in the pay scales as applicable to the Assistant Teacher after deducting the honorarium paid to the petitioner. The respondent no. 3 is the Education Officer (Primary), Zilla Parishad, Ahmednagar and the respondent No. 1 is the State of Maharashtra.

3) In that proceeding, undisputed facts in between the parties are that on 22/11/2006, the petitioner was appointed as “Shikshan Sevak” by following due process of law in Zilla Parishad Primary School, More-Borkar Mala on probation for the period of next three years. He worked as “Shikshan Sevak” from 22/11/2006 till December 2008. Thereafter, the petitioner remained absent and therefore on 17/12/2009 the appointment order of the petitioner was cancelled. It is also not disputed that on 24/01/2010, respondent no.

2 passed an order and cancelled his previous order dated 17/12/2009 and directed the petitioner to resume his duty. Since 01/02/2010 petitioner joined his duties at Thakarwadi.

4) Learned counsel for the petitioner submitted that the order of dis-continuation of service of the petitioner dated 17/12/2009 was cancelled by respondent no. 2, when petitioner filed requisite medical certificate to show that due to ailment, he could not attend his duties for the above said 163 days. Therefore, treating this period of 163 days as leave period, he had completed his probation period on 05/05/2010 and therefore he is liable to be confirmed in the service of Assistant Teacher on regular salary as per 6th Pay Commission. The learned counsel for the petitioner pointed out that the petitioner worked for more than six years but he was not confirmed till filing of this petition. The petitioner submitted representation to respondent no. 2 on 25/01/2012 and 20/02/2013, but he did not pay any heed to these representations. Therefore, the petitioner was constrained to file this writ petition.

5) Learned counsel for respondent no. 2 pointed out that during the pendency of this writ petition on 06/06/2017 the respondent no. 2 has confirmed the services of the petitioner after completion of probation period of three years with effect from 01/02/2014 and therefore the petitioner is entitled to regular pay

scale of Assistant Teacher in the scale of 5,200/- to 20,200/- of grade pay of Rs.2800/-.

6) The contention of the learned counsel for the respondent no. 2 is that as the petitioner did not perform his duties satisfactorily, his services were terminated by respondent no. 2 and therefore, though on 01/02/2010 the petitioner was allowed to join his duties, the order dated 24/01/2010 was fresh appointment order of the petitioner and therefore his past services prior to 24/01/2010 cannot be taken into consideration while calculating the probation period of three years. He pointed out that, as per the Government Resolution dated 27/02/2003, which governs his service conditions as "Shikshan Sevak", the petitioner is not entitled to claim earned leaves or medical leaves as per Clause 14 of the Government Resolution.

7) Thus, the question arose whether, while calculating three years probation period of the petitioner, his services can be counted from the first date of appointment dated 22/11/2006 or from 01/02/2010 when termination order dated 17/12/2009 was cancelled and petitioner was reinstated as per order 24/01/2010. First point to decide is, whether the order dated 24/01/2010 was fresh appointment order or whether it is the order of reinstatement.

8) After going through the order dated 24/01/2010 it

becomes clear that by that order the previous termination order dated 17/12/2009 was cancelled by respondent no. 2 and it was directed to reinstate the petitioner by Panchyat Samiti, Parner. The word "reinstatement" used in the order dated 24/01/2010 indicates that, it was not a fresh appointment order but merely cancellation of termination order dated 17/12/2009, issuing direction to reinstate the petitioner on his previous post as "Shikshan Sevak". Even in the reply affidavit, of respondent no. 3, he has specifically admitted in para no. 1 of the affidavit that the petitioner came to be "reinstated" on the post of "Shikshan Sevak" by office order dated 24/01/2010. Thus, conclusion has to be drawn that the office order dated 24/01/2010 is not fresh appointment order but only the order of reinstatement of the petitioner. Therefore, for calculating the probation period of three years the first date of appointment i.e. 22/11/2006 is to be taken into consideration as starting point of the period of the probation.

9) However, at the same time, it cannot be ignored that the order of cancellation of termination of the petitioner nowhere speaks that the absence for the period of 163 days of the petitioner was regularized as medical leave or any other type of the leave. Otherwise also, Clause No. 14 of the Government Resolution dated 27/02/2003 makes it crystal clear that "Shikshan Sevak" is not entitled to any type of leave except, five days pre sanctioned

absence in one year. Thus, obviously while calculating the probation period of three years the absence period of petitioner was regularized as medical leave or any other type of leave. This absence period has to be excluded while calculating the probation period of three years from 22/11/2006. Thus, if from the date of appointment i.e. from 22/11/2006 the absence period of petitioner i.e. period from 01/01/2009 to 31/01/2010 is excluded, the petitioner will complete the probation period of three years on 22/12/2010. Thus, if the probation period is completed satisfactorily, then from 23/12/2010 the petitioner can be regularized in the pay scale of primary teacher.

10) From the order dated 06/06/2017, it emerges that the respondent no. 2 has regularized the petitioner in the pay scale of primary teacher but w. e.f. 01/02/2014. However, as observed above, as petitioner has completed his probation period on 22/12/2010, he is entitled for regular pay scale of primary teacher from 23/12/2010. To that effect, the order dated 06/06/2017 passed by respondent no. 2 Chief Executive Officer, Zilla Parishad, Ahmednagar deserves to be modified. The petitioner will be also entitled for arrears of difference of pay scale from 23/12/2010 after adjusting honorarium paid to the petitioner for this period. The learned counsel for respondent no. 2 made statement that the amount of Rs. 8,43,562/- on account of regularization of pay scale is to be adjusted while calculating the arrears of difference of pay scale. That statement is accepted. In

view of this discussion, we hold that this Writ Petition deserves to be partly allowed. Hence following order :

ORDER

- 1) Writ Petition No.2233/2013 is partly allowed.
- 2) Rule is made absolute in aforesaid terms.
- 3) Respondent no. 2 is directed to modify the order dated 06/06/2017 accordingly.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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