

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

WRIT PETITION NO.7337 OF 2016

1. Shashikant s/o. Gulchand Londhe
Age: 27 yrs., Occu.: Service,
R/o.Murud, Tq. & Dist. Latur.
2. Vilas s/o. Vasantrao Kadam
Age: 35 Yrs., Occu.: Service,
R/o. Murud, Tq. &
Dist. Latur

PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer [Primary],
Zilla Parishad, Latur.
4. Samaj Jagruti Education Sanstha
Tq. & Dist. Latur
Through its Secretary
5. The Head Master,
Samaj Jagruti Primary School,
Murud, Murud,
Tq. & Dist. Latur.

RESPONDENTS

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Mr.R.D.Biradar, Advocate for the Petitioner
Mr.P.N.Kutti,AGP for Respondent Nos.1 & 2/
State
Mr.U.B.Bondar, Advocate for respondent no.3.
Mr.N.B.Ghute,Advocate for respondent nos.4
and 5.

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 15.02.2018
Pronounced on : 22.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] This Petition is filed praying therein to quash and set aside the order dated 09.05.2016 passed by the Education Officer [Primary], Zilla Parishad, Latur, by which the proposal of the petitioners came to be rejected and direct to accord the permanent approval in favour of the petitioners and release their arrears of salary since the date of appointments.

During pendency of this Petition, respondent no.3 passed the order dated 25th January, 2017. The prayer was made to amend the Petition, and accordingly, the said order is also assailed in this Petition.

2] We have considered the submissions of the learned counsel appearing for the petitioners. Both the petitioners have filed Writ Petition No.2518/2013 before this Court. In the said Petition, the judgment was pronounced on 23rd October, 2015. In order to avoid repetition of reproducing facts and the arguments and the reasons assigned by this Court in the said judgment, we deem it appropriate to reproduce para 2 to 14 of the said judgment, which read thus:

2. Writ Petition No. 2518/2013 takes exception to the impugned communication dated 27th July, 2012 issued by the Respondent No.4 i.e. Education Officer. There is further prayer seeking directions to the Respondents to grant approval / administration sanction to the post held by the petitioners in respondent no.6 – school since from their initial appointments, as per

Government Resolution dated 1st April, 2011.

3. It appears that, the petitioners are working as peon and junior clerk in Respondent No.6 Samaj Jagruti Primary School run by Respondent No.5 Samaj Jagruti Shikshan Sanstha.

4. Writ Petition No. 8424/2013 is filed seeking directions to the Respondents to implement the order of absorption of the petitioner and release the payment of salary payable to the petitioner from the month of October, 2012 till date. It appears that, the Respondent Authorities directed the Headmaster Samaj Jagruti Primary school to absorb the petitioner by the impugned order.

5. It is the case of the petitioners in Writ Petition No.2518/2013 that, their appointments are made in pursuant to the advertisement issued by Respondent Nos. 5 and 6 for the post

of peon and junior clerk on non-grant basis. The petitioners being eligible and qualified to the posts of peon and junior clerk respectively, have been appointed by Respondent Nos. 5 and 6 and accordingly, petitioner no.1 was appointed by appointment order dated 21st September, 2005 and petitioner no.2 was appointed by appointment order dated 10th June, 2004. In spite of their continuous service from their appointments, they are not receiving salary and also their posts have not been sanctioned or approved from the respondents. According to the petitioners, Respondent Nos. 5 and 6 are entitled for additional posts in view of the increase in strength of the students i.e. more than 500 and to that extent, even the Respondents conducted inspection and found Respondent No.6 school run by Respondent No.5 entitled for additional post of peon and clerk.

6. The learned counsel appearing

for the petitioners invited our attention to Exhibit-B of the compilation of Writ Petition i.e. inspection carried out for the academic year 2012-2013 by the Education Extension Officer, Panchayat Samiti, Renapur and submits that, for the academic year 2004-2005, there were 511 students and for the academic year 2005-2006, there were 556 students. It is submitted that, the petitioners' appointments are in accordance with rules/procedure and since 2004-2005 the proposals were sent for sanction/approval, however, the Respondents did not take any steps and on the contrary directed Respondent No.6 to absorb Avinash Vishnu Devare, since he was declared surplus, who is petitioner in Writ Petition No. 8424 of 2013.

7. The learned counsel appearing for the petitioners further invited our attention to the pleadings and grounds taken in the Petition, the impugned communication and submits

that, though it was within the powers of Education Officer (Primary), Zilla Parishad, Latur to sanction staffing pattern for the non-teaching staff i.e. clerk, peon and to that extent the proposal was forwarded for the period 2004-2005 to 2011-2012. However, the Education Officer rejected the same on the ground that, the sanction from the Government is necessary. The learned counsel submits that, the Government Resolution dated 26th March, 2002, which is referred in the impugned communication, nowhere states that, the Education Officer (Primary), Zilla Parishad, Latur is not competent authority to accord the sanction/approval to the staffing pattern for the year 2004-2005 to 2011-2012. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

8. The learned counsel appearing for the petitioner in Writ Petition No. 8424 of 2013 submits that,

inspite of directions issued by the Respondents to the Respondent No.8 therein and though he was declared surplus, he is not absorbed in the said school and his salary is yet not paid by the Respondent - Education Officer.

9. The learned A.G.P. appearing for the Respondent/State invited our attention to the affidavit in reply filed in Writ Petition No. 2518/2013 and submits that, the Petition may be rejected.

10. The learned counsel appearing for Respondent Nos. 4 and 5, relying upon the affidavit in replies filed in both the Petitions, made submission that, so far Writ Petition No. 2518 of 2013 is concerned, the petitioners therein were appointed on year to year basis without sanction / approval from the Respondent Authorities and therefore, the Petition may be rejected. In another Writ Petition No. 8424 of 2013, he submits that,

the petitioner therein is declared surplus and directions are given to Respondent No.8 therein to absorb the petitioner and Respondent No.8 is supposed to adhere to the directions given by the Education Officer.

11. We have heard the learned counsel appearing for the petitioners, learned A.G.P. appearing for the Respondent/State and State Authorities and the learned counsel appearing for the Chief Executive Officer, Zilla Parishad, Latur and the Education Officer (Primary). With their able assistance, we have perused the entire documents placed on record and the reasons assigned in the impugned order by the Education Officer (Primary), Zilla Parishad, Latur in Writ Petition No. 2518/2013. It appears that, Respondent No.6 i.e. Headmaster Samaj Jagruti Primary School, Murud sent the proposal for sanction of non-teaching staff i.e. clerk and

peon on 29th March, 2012 for the academic year 2004-2005 to 2011-2012. However, the Education Officer (Primary) has shown his inability to grant sanction/approval to the posts, in addition to earlier staff approved on the ground that, in view of the Government Resolution dated 26th March, 2002, his office cannot grant sanction/approval and have to obtain sanction from the Government.

12. Upon careful perusal of the impugned communication, it is abundantly clear that, the Education Officer neither adverted to any specific clause of the said Government resolution and without assigning any reason observed that, no sanction/approval can be accorded for additional posts by his office. In fact, before taking such decision Education Officer ought to have given reasonable opportunity of hearing to respondent Nos. 5 and 6 in Writ Petition No.2518 of 2013 and also to the petitioners and then

ought to have taken decision. Apart from it, the said Authority ought to have considered the contentions of the petitioners that, they are appointed from the year 2004-2005 and till date they are working as clerk and peon, and therefore, the sanction for the additional posts of peon and clerk ought to have been given by the Education Officer since the strength of students has increased more than 500 in Respondent No.6 School from the year 2004-2005 onwards. It is also contention of the petitioners that, without considering the fact that, the petitioners are already working on the posts of clerk and peon, the Respondent - Education Officer directed the Headmaster of the Samaj Jagruti Primary School to absorb Avinash Vishnu Devane, the petitioner in Writ Petition No. 8424 of 2013.

13. Since the impugned communication is without adverting to the specific clause of the

Government Resolution dated 26th March, 2002, which according to the Education Officer prohibits him from granting sanction/approval to the additional staff and said impugned communication is without hearing the concerned educational Institution and also the petitioners, in our opinion, impugned communication deserves to be quashed and set aside. It was also necessary for the Education Officer to find out from the respondent - educational Institution before issuing directions for absorption of Avinash Vishnu Devane, who is declared as surplus, in Samaj Jagruti Primary School about the vacancy in the said school. However, it, prima facie, appears that, without such exercise, the Respondent - Education Officer has directed Respondent No.6 i.e. Headmaster Samaj Jagruti Primary School to absorb Avinash Vishnu Devane as a clerk.

14. In that view of the matter, the impugned communication stands

quashed. Respondent -Education Officer (Primary), Zilla Parishad, Latur is directed to reconsider the proposal submitted by Respondent - Institution dated 29th March, 2012 in the light of the policy of the State Government and take decision after hearing the representative of the respondent - Institution, the petitioners and also the petitioner in Writ Petition No. 8424 of 2013. It is desirable to complete such exercise, as expeditiously as possible, however, in any case within three months from today. The Respondent - Education Officer to assign the detail reasons while passing further orders/taking decision on the proposal dated 29th March, 2012 and also the prayer of the petitioner in Writ Petition No. 8424/2013 and communicate the said decision to the petitioners and the Respondent-Institution. Meantime, the Education Officer shall ensure that, the petitioner in Writ Petition No. 8424 of 2013 is paid unpaid salary.

3] Pursuant to the directions issued by this Court in the aforesaid Writ Petition, it appears that the Education Officer [Primary], Zilla Parishad, Latur, has taken decision, thereby rejecting the approval to the appointments/services of the petitioners. By the impugned communication dated 09.05.2016 [Exhibit-G Colly Page-75], the respondent no.3 has stated three reasons for not granting approval to the appointment of the petitioners; *firstly*, without having sanctioned post the appointments have been made, *secondly*, sanction for such post has been received after appointment, and *thirdly*, instead of absorbing surplus teachers, and in absence of sanctioned post and also without seeking permission of the respondent no.3, appointing the employees. With the above reasons, the respondent no.3 has refused to accord approval to the appointments of the petitioners and continuity in their services.

Upon careful perusal of the said communication, there is no reference made in respect of the directions issued by this Court in the aforesaid Writ Petition i.e. Writ Petition No.2518/2013. Therefore, it appears that the Education Officer in a very casual manner even without making reference of the directions issued by this Court, has dealt with the proposals for appointment and continuity of services of the petitioners, submitted by the respondent-management.

4] Upon careful perusal of the alleged communication / order issued on 25th January, 2017, the contents of the order would make it abundantly clear that there are vague and general reasons given in the said order, without keeping in view the facts of the case and minute details. The petitioners have placed on record copy of the Government Resolution dated 1st April, 2011, issued by

the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai. By way of issuance of the said Government Resolution, the Government of Maharashtra has made admissible/sanctioned the post of one Junior Clerk and Class-IV employee i.e. Peon, the school wherein the strength of the students more than 500. The petitioners have placed on record the information showing that the strength of the students in the concerned school, where they are serving, was more than 500 every year. The Education Officer has not considered the contention of the petitioners that they have been appointed in the year 2004-2005, and since then they are continuously rendering the services and also the posts on which they are working, are admissible / sanctioned to the concerned school. Admittedly, the appointments of the petitioners are made in the year 2004-2005, and therefore, the policy

brought into force by the State Government in respect of the absorption of surplus teachers, cannot be made applicable in case of the present petitioners, who have been appointed in the year 2004-05. The Education Officer has not kept in view that petitioner no.1 is from reserved category.

5] In that view of the matter, we are of the considered view that the impugned orders dated 09.05.2017 and 25.01.2017 deserve to be quashed and set aside. Accordingly, the same are quashed and set aside. The Education Officer [Primary] is directed to re-consider the proposal submitted by the respondent-management for the approval to the appointments of the petitioners and also continuity in service, keeping in view the discussion made herein above, as expeditiously as possible, however, within 6 weeks from today. We direct the Education Officer to hear the petitioners and

also respondent-management, and allow them to place on record relevant documents in case they wish to file such documents and then only take appropriate decision by a reasoned order.

6] With the above observations, the Writ Petition stands disposed of.

7] Parties to act upon authenticated copy of this order.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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