

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

933 WRIT PETITION NO. 12674 OF 2016

. Manohar S/o. Govindrao Thote
Aged: 39 years, Occ.: Service
as Assistant Teacher,
R/o.Kurula, Tq.Kandhar,
Dist.Nanded. ..Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education & Sports,
Department, Mantralaya,
Fort, Mumbai - 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded.
4. Smt.Smita Madhavrao Kahalekar
The President,
Laxmikant Bahuddeshiya Seva-Bhavi
Shikshan Sanstha, Nanded.
5. Manohar S/o Vishwanathrao Bhosikar
The Secretary,
Laxmikant Bahuddeshiya Seva-Bhavi
Shikshan Sanstha, Nanded.
6. The Headmaster,
Laxmikant Primary School,
Datta Nagar, Nanded. ..Respondents

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Advocate for Petitioner : Mr.N.P.Patil Jamalpurkar

AGP for Respondent Nos.1 & 2: Mr.S.S.Dande

Advocate for Respondent No.3 : Mr.N.S.Kadam

Advocate for Respondent Nos.4 & 6 : Mr.I.D.Maniyar

Advocate for Respondent No.5: Mr.Vitthal G.Salgare

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CORAM : R.M.BORDE AND

K.K.SONAWANE, JJ.

DATE: 20th March, 2018

ORAL JUDGMENT:-

(Per: R.M.Borde, J.)

1) On oral request made by Mr.V.S.Panpatte learned counsel, he is permitted to withdraw appearance on behalf of respondent Nos.4 and 6 in view of the fact that Mr.I.D.Maniyar learned counsel appears on behalf of the aforesaid respondents.

2) Heard the learned counsel for the parties.

3) Rule. With the consent of the learned counsel for the parties, the petition is taken up for final disposal at the admission stage.

4) The petitioner is making grievance in the instant petition in respect of failure of the respondent No.3 - Education Officer (Primary), Zilla Parishad, Nanded, to accord approval to the appointment of the petitioner as Assistant Teacher. The respondent No.3 - Education Officer (Primary) has turned down the proposal tendered by the Institution seeking approval to the appointment of the petitioner by order dated 23.7.2007 for the reason that the appointment of the petitioner has not been made in observance of the procedure prescribed in that behalf. It is also recorded in the order of rejection of the approval passed by respondent No.3, that neither permission has been sought before making appointment nor a list of eligible candidates was called from the office of Employment Exchange or Social Welfare Department.

5) The petitioner came to be appointed as a Shikshan Sevak by order dated 11.11.2002 in

pursuance of the advertisement issued on 7.10.2002. The respondent No.6 Institution tendered a proposal to respondent No.3 on 30.1.2006 seeking approval to the appointment of the petitioner as Assistant Teacher. The proposal was not decided by respondent No.3, as such the petitioner approached this Court by presenting Writ Petition No.3834 of 2006 seeking directions to the respondent No.3 to take decision on the proposal and to accord approval to the appointment of the petitioner as Assistant Teacher. This Court disposed of said petition directing the respondent No.3 to take decision on the proposal submitted by respondent Nos.4 and 5 within three weeks from the date of the order. The respondent No.3, however, did not decide the proposal within the time-frame prescribed by the High Court.

6) The petitioner filed Writ Petition No.1741 of 2010 seeking directions against the respondent no.3 to accord approval to his appointment as

Assistant Teacher. The respondents caused appearance in the matter and presented affidavit-in-reply stating that the services of the petitioner were orally terminated w.e.f. 24.12.2006. Looking to this aspect, the High Court vide order dated 4.7.2011 has granted liberty to the petitioner to challenge the order of oral termination by presenting appropriate proceedings before appropriate Court and writ petition came to be disposed of.

7) The petitioner, thereafter, proceeded to present Appeal No.67 of 2011 before the School Tribunal, challenging the order of oral termination issued by respondent No.6 management. The Presiding Officer of the School Tribunal by order dated 11.7.2013 allowed the appeal and directed respondent nos.5 and 6 management to reinstate the petitioner in service as Assistant Teacher and to pay him regular salary out of their funds. Respondent no.4 – the President of the

Institution presented Writ Petition No.6715 of 2013 in this Court challenging the Judgment and order passed by the Presiding Officer, School Tribunal in Appeal No.67 of 2011. This Court dismissed the Writ Petition No.6715 of 2013 presented by respondent No.4 on 4.3.2015.

8) Being aggrieved by the Judgment and order dated 4.3.2015, respondent No.4 preferred a petition for Special Leave to Appeal (C) No.14423 of 2015 before the Supreme Court of India. The Supreme Court dismissed the petition for Special Leave to Appeal presented by respondent no.4 by order dated 15.5.2015. In the meanwhile, the petitioner is in duties and served with respondent No.6 without any break. However, he has not been paid salary for the work, which he has done. The petitioner made representation to the respondent no.3 and requested him to accord approval to his appointment as Assistant Teacher and release the salary. However, according to the petitioner,

nothing has been done in the matter by respondent No.3.

9) It is not a matter of dispute that the petitioner is functioning as Assistant Teacher in the School operated by the respondent management since 2002. While disposing of Appeal presented by the petitioner challenging oral termination, the Presiding Officer of the School Tribunal directed the School management to reinstate the petitioner on the post of Assistant Teacher and to pay him regular salary from its own funds. The prayer of the petitioner for quashing oral termination dated 15.6.2007 has not been considered since the respondent Nos.4 and 6 herein denied the contention before the School Tribunal that there was oral termination of petitioner. The School Tribunal proceeded to hold the petitioner as a permanent employee of the Institution and held that his services cannot be put to end without observance of procedure prescribed under law.

10) The Education Officer (Primary) was party to the proceedings before the School Tribunal as well as was impleaded as a party to the proceedings of Writ Petition No.6715 of 2013 presented before the High Court. The Education Officer (Primary) contended before the High Court that at the relevant time, the scheme of appointment of Shikshan Sevak was in existence. He has contended that no permission was obtained from the Education Officer (Primary) before making appointment of the employee/petitioner. The Education Officer (Primary) has contended that no liability can be fasten on the State to make payment of salary since no approval to the appointment of the petitioner has been secured. The High Court did not accept the contention raised by the writ petitioner/President of the Institution and dismissed the petition. The High Court further proceeded to observe that the appointment of the petitioner was on permanent basis and necessary

inference needs to be drawn that the appointment initially made as Shikshan Sevak for a period of three years shall be deemed within contemplation of the scheme. It is further recorded by the High Court that it would not be open to contend that the appointment was not made against clear and permanent vacancy. It shall have to be presumed that the appointment is within the meaning of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. A reference is made to the Judgment of Full Bench in the matter of **Ramkrishna Chauhan Vs. Seth D.M. High School and Ors. in Writ Petition (OS) No.315 of 2006** and the inference has been drawn on the basis of the Judgment of Full Bench that the appointment is against a clear vacancy and even if assuming that it was for a temporary period, it shall be construed in view of the Full Bench's Judgment referred to by the High Court that the appointment, which has been made against a clear and permanent vacancy is on probation within the

meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The petitioner on completion of probation gets status of Assistant Teacher. It also needs to be noted that the petitioner is continued in employment since 2002 onwards till this stage.

11) In the circumstances, at this late stage, it would not be open for the Education Officer (Primary) to contend that the initial appointment was itself irregular and as such the employee – petitioner is not entitled to claim approval to his appointment. The petitioner was permitted as a result of intervention by the Education Officer to resume duties as Assistant Teacher from 9.2.2016. During the intervening period from the date of the alleged discontinuation till the matter was finally decided by the Supreme Court, it does appear that the management did not obey the order and did not permit the petitioner to

join duties. The school management, in these circumstances, shall not be absolved from the responsibility of the payment of salary to the petitioner. The petitioner for one reason or other has not worked during the intervening period as Assistant Teacher. In terms of the order passed by the School Tribunal, it would be the responsibility of the management to pay salary for a duration during which the petitioner was not permitted to perform his duties as Assistant Teacher until he was permitted to join on 9.2.2016.

12) The Education Officer (Primary) shall consider the proposal for according approval to the appointment of the petitioner from the date of his joining in the School on 9.2.2016. The earlier order passed by the Education Officer (Primary) refusing to accord approval to the appointment of the petitioner, shall not be an impediment to accord approval to the appointment of the

petitioner from 9.2.2016 and the Education Officer (Primary) shall not reject approval on the ground that the appointment of the petitioner is not in observance of the procedure prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It shall be presumed that the appointment of the petitioner is properly made in view of the observations made by the Single Judge of the High Court in the Judgment referred to above.

13) The Education Officer (Primary) shall accord approval to the appointment of the petitioner by observing procedure prescribed in this behalf from 9.2.2016 and shall pay him salary from the aforesaid date and shall continue to pay him in future. It would be responsibility of management to pay salary/back wages to petitioner till 8.2.2016.

14) The counsel appearing for the School

management undertakes to forward a proposal seeking approval to the appointment of the petitioner as Assistant Teacher from 9.2.2016 within a period of six weeks from today.

15) Rule is made absolute in above terms.

16) There shall be no order as to costs.

(K.K.SONAWANE)
JUDGE

(R.M.BORDE)
JUDGE