

5- WP 8820 of 2011

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 8820 OF 2011**

Shri Kalal Kumar Kisan

...Petitioner

Vs.

State of Maharashtra and Ors.

...Respondents

Mr. Vipul K. Bodhane for petitioner

Mr. Karan Thorat -AGP for Respondent Nos. 1 and 2

Mr. Dilip Bodke for Respondent Nos. 3 and 4

CORAM : SMT. SADHANA S. JADHAV, J.
DATE: OCTOBER 3, 2018

P.C.

1. Heard the learned counsel for the Petitioner and learned counsel for Respondent Nos. 3 and 4. Rule. Rule is made returnable forthwith by consent of parties.

2. As on today, no affidavit is filed on behalf of Respondent Nos. 1 and 2. Hence, it appears that Respondent No.1 and 2 have left the matter for the parties i.e. Petitioner and Respondent Nos.3 and 4 to decide on their say.

3. The Petitioner herein impugns the judgment and order dated 26th of July, 2011 passed by the School Tribunal, Kolhapur thereby dismissing the appeal filed by the present Petitioner. The Petitioner had filed an appeal before the School Tribunal and had contended that he was appointed on the post of Assistant Teacher on 3rd August, 2001 on clear vacant post. That there was oral termination on 4th September, 2006 although his performance was satisfactory and there was no adversary remark against him. He had also claimed deemed permanency as 3rd of August, 2002. It is admitted position that the Petitioner had not filed his appointment letter on record. He had also not filed his caste certificate. The Respondents have appeared before the Tribunal but the written statement filed by them was only signed by their counsel. It was neither verified nor affirmed by Respondent Nos.3 and 4 or anybody on their behalf. Respondent No.3 had denied the appointment of the Petitioner on the ground that in fact there was a backlog in the reserved category of schedule caste. The Petitioner belongs to Hindu Lonari Caste which falls in OBC Category. According to the Petitioner, the percentage of reservation was 34%. The school was started in the year 1999 and in the year 2001, there were 4 posts which were sanctioned posts and, therefore, he was appointed in open category although he belonged to OBC.

4. It is pertinent to note that the Learned School Tribunal has taken into consideration the fact that even assuming that the Petitioner herein was appointed on 3rd of August, 2001, no advertisements were issued prior to his appointment. There is nothing on record to show that he was called for an interview, his documents were perused and he was interviewed by the school management. Hence, it is submitted that the appointment of the Petitioner was not made by following due process of law. In the course of hearing before the Tribunal, the Petitioner herein had filed an application seeking amendment to replace the word 'Open Category' on the ground that he in fact, belongs to OBC Category. The said application, seeking amendment, was rejected as in fact even according to the Petitioner he was appointed in open category. The School Tribunal has also considered the fact that in the year 2001-2002, there were four posts. Out of which, there was one backlog of SC candidate, clear vacant posts for 1 SC category and two posts for OBC category. In view of this, it is not known as to how the Petitioner could be appointed in open category. The very fact that the Petitioner was not appointed by following due procedure of law would dis-entitle him to seek regularization of services.

5. On perusal of papers, it appears that for the year 2001-2002 there were four posts for the teachers teaching VIII to Xth Class. Besides one principal

i.e. teaching staff was only of five members and, therefore, there is no question of having four vacant posts against which the Petitioner could be appointed when the sanction strength itself was 5 i.e. four teachers and one principal.

5. The learned counsel for the Respondent Nos.3 and 4 Mr. Bodke, on instructions, submits that the School started getting 40% grant in aid from the year 2004 and in the year 2006, it has got 60% grant in aid and from 2007 the school is getting 100% grant in aid .

6. It is true that the Petitioner has been out of service since 2006 i.e. after the school has started receiving 60% grant in aid. Since the appointment itself was illegal and invalid, the Petitioner cannot claim any right.

7. In view of this, the petition stands dismissed on merits. Rule is discharged.

[SMT. SADHANA S. JADHAV, J.]