IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4584 OF 2017

Gadwal M. Jaweed M. Yunus .... Petitioner
Vs.
State of Maharashtra & Others .... Respondents

Mr. S.M. Kamtam i/by Meenal S. Deshmukh for the Petitioner.
Mr. V.M. Mali, AGP, for Respondent Nos.1 & 2.
Mr. Vijay Killedar for Respondent No.4.
Mr. J.D. Khairnar for Respondent No.5.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JULY 10, 2018

P.C:

1. The petitioner was employed as a Shikshan Sevak. He continued to work and to the satisfaction of the Management. The appointment was made on the footing that the minority institution requires the services of a teacher but the law does not permit that minority institution to appoint somebody as a teacher straightaway. He/she has to be appointed

as a Shikshan Sevak. That is how the petitioner was appointed. The petitioner says that the entire procedure for making such an appointment was scrupulously followed. He was given an appointment letter, dated 17-6-2013, appointing him for three years as Shikshan Sevak. If the law itself was to be applied and with full force, as is now contended or attempted to be contended before us, then, it does not allow a person so appointed to remain as Shikshan Sevak but his services have to be confirmed as an Assistant Teacher after a duration of two years. That the petitioner completed and, therefore, the Management submitted a proposal and that proposal, in this case, was forwarded to the Solapur Municipal Corporation for the school in question was termed as a Primary School. The Local Body then being designated by law and entrusted with the duty to impart primary education, the proposal of the Management was placed before it. That proposal was first recommended and forwarded to the Director of Education by a letter of 14-11-2014. The petitioner was trying to obtain approval to his appointment but that proposal has to be

forwarded only through the Management and the Management then was confronted with, firstly, an inaction which led to legal proceedings and thereafter a fresh proposal was forwarded. The fresh proposal also has met with a rejection and the rejection is on the ground that the school in question could not or did not absorb surplus teachers and because the surplus teachers were not absorbed, there is violation of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, and particularly Section 5(1) of the Act and Rules 25A and 26 of the Rules. This was overlooking the fact that this is a minority school and recognised as such. No employee could have been thrusted or foisted on this institution and in the manner done by the Solapur Municipal Corporation. That is how the teacher now challenges the order of 23-3-2017, rejecting the proposal.

2. There are affidavits in reply filed on behalf of the Solapur Municipal Corporation and that of the school. The Solapur Municipal Corporation says that the relevant documents

were suppressed, in the sense the petitioner's appointment is illegal. The appointment is sought to be made by persons by inserting advertisement and inviting applications, though such persons were not Trustees of the Trust managing and administering respondent No.5. Hence the proposal was rightly turned down. The first respondent is the school and an affidavit is filed by one Smt. Ruksana Salim Shaikh and it is from her affidavit that the Solapur Municipal Corporation derives support for its action. Pertinently, paras 4, 5 and 6 of this affidavit refers to some internal disputes or groupism or factionalism in the Management.

3. We are least concerned with this aspect of the matter for the reason that the proposal has not been rejected on the ground that the appointment is vitiated by fraud or suppression of material documents. It is primarily rejected on the ground that the petitioner's appointment would contravene the MEPS Act and the MEPS Rules, in that the surplus teachers would have to be absorbed and then only the petitioner can be confirmed in service. The surplus teachers are admittedly from other

institutions.

4. Now it is conceded before us that in the light of the Judgment of a Division Bench of this Court rendered at Aurangabad on 7-10-2013 in Writ Petition No.5633 of 2013 {**Anjuman Ishaat-E-Taleem Trust vs. State of Maharashtra & Anr.**}, as also another Division Bench Judgment, also rendered at Aurangabad in **Writ Petition No.116 of 2012**, decided on 16-7-2012, the impugned order cannot be sustained.

5. We feel that this much is enough for us to allow this petition, quash and set aside the impugned order and direct the Deputy Director of Education now to consider the request as contained in the Management's proposal for approving the petitioner's appointment afresh, on merits and in accordance with law. However, the Deputy Director shall not be influenced by the earlier orders or the reasoning contained therein. We are making this matter over to the Deputy Director of Education, Pune Region, Pune for we are thoroughly disappointed with the fact that neither the Education Officer (Primary) nor the

Administrative Officer of the Municipal School Board, Solapur Municipal Corporation have applied their minds to the germane and relevant factors but have been influenced by totally extraneous considerations. In the circumstances, as an exception and not as a rule, the matter is made over to the Deputy Director of Education, Pune Region, Pune. He shall pass fresh orders after hearing all the parties within a period of six weeks from the date of appearance. The writ petition is allowed in these terms by clarifying that we have not expressed any opinion on the rival contentions.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

Suresh Jagdish Sajnawat
Digitally signed by Suresh Jagdish Sajnawat
Date: 2018.07.12 15:34:37 +0530