

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5276 OF 2017

Mr. Dilip Shivaji Patil ... Petitioner

Versus

The President,
The Chaitanya Education Society
And Others ... Respondents

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Mr. N.V. Bandiwadekar a/w Mr. Vinayak Kumbhar i/b Mr. Sagar Mane for
the Petitioner.

Mr. Kirankumar J. Phakade for Respondent Nos.1 And 2.

Mr. A.R. Metkari, Additional Government Pleader for Respondent No.3.

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CORAM : S.C.GUPTE, J.

DATE : 13 JUNE 2018

Oral Order :

3. Heard learned Counsel for the parties, including Respondent No.3-State.

2 Rule.

3 Rule is taken up for hearing forthwith by consent of Counsel.

4 This petition challenges an order passed by the School Tribunal of Kolhapur in an appeal filed by the Petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (“the Act”). The Petitioner was appointed as Assistant

Teacher in Open Category. His appointment was of 6 March 2012 and made in pursuance of an advertisement issued for the post. The advertisement *inter alia* indicated that there were three posts of open category and three reserved for appointment of Assistant Teachers. The Petitioner was selected on the basis of his application made in pursuance of this advertisement and appointed on probation for a period of three years from 6 March 2012 to 5 March 2015. After he completed his probation, on 15 February 2016, there was an oral termination order issued to the petitioner. This termination was on the footing that the Petitioner's appointment was not approved by the Education Department. The Petitioner preferred an appeal from the order of termination before the School Tribunal. It was admitted by the School Management in its written statement that the Petitioner's appointment was made in open category and after following due procedure by issuing an advertisement and receiving applications from aspiring candidates. The school management also accepted that the only ground on which the Petitioner was orally terminated was want of approval to his appointment by the Education Department. The tribunal rejected the Petitioner's appeal holding that the appointment was not made in an open vacancy by following due procedure. This order is challenged by the Petitioner in the present writ petition.

5 There are three circumstances which appear to have weighed with the tribunal whilst arriving at the impugned order. Firstly, the tribunal noted that it was doubtful whether there was a permanent vacancy in terms of Section 5 of the Act so far as the Petitioner's appointment was concerned. The tribunal held that to show that there was a vacant post for

open category, duly verified roster was not produced before it. This observation is in the teeth of the record of the case. On specific application made by the school management in that behalf, production of a duly verified roster was in terms allowed earlier by the tribunal. The roster produced before the tribunal shows that there were six vacant posts for open category. It is also on record that out of 45 posts of teachers, 22 posts were available for open category and that the particular teacher, who had retired around the relevant time and in whose post the appointment was to be made, was working in permanent open category. It is also borne out by record that six posts of Assistant Teacher were advertised around the time (i.e. after retirement of the particular teacher) and out of these, three were for open category. The appointment letter of 5 March 2012 issued by the School Management to the Petitioner also indicates his appointment in open category in a vacant post. All of this material together with the admissions of the school management in its written statement leads to one and only inference and that is that the Petitioner's appointment was made in open category in a vacant post after following due process including *inter alia* publication of an advertisement and inviting applications from the aspiring candidates and holding interviews for the posts. The very foundation of the impugned order that it was doubtful whether there was a clear permanent vacancy or that the appellant's (the petitioner herein) appointment was in a vacant post for open category, thus, has no basis and is patently against the record.

6 The second reason, which appears to have weighed with the school tribunal is that the particular post (being a post in an aided school) was not sanctioned by the Education Department. As noted above, the order of

the Education Officer (Exhibit 'A' to the petition) along with the staff schedule annexed to it indicates that there were in all forty five posts of teachers in the particular school and considering 50 per cent reservation, there would be twenty two posts available in open category, all of which were sanctioned by the Education Department. The roster duly verified by the Education Department also shows that around the relevant time when the advertisement was issued, there were in all six vacant posts of teachers in open category. (These included the permanent post of the retired teacher as noted above.) This part of the reasoning is also, thus, opposed to the record of the case and is such as no reasonable man duly instructed in law could have arrived at.

7 The third reason which appears to have influenced the tribunal was want of approval of the Education Department to the appointment of the Petitioner. This Court in its Full Bench judgment in the case of **St. Ulai High School Vs. Devendraprasad Jagannath Singh**¹ has categorically held that neither the Act nor the Rules framed thereunder mandate grant of approval by the Education Officer as a condition precedent to a valid order of appointment. The requirement of approval, which relates to disbursal of grant in aid, is a matter between the management and the State and want of approval will not invalidate an order of appointment. This ground for the impugned order also accordingly has no substance whatsoever, having regard to the settled law.

8 In the premises, the impugned order of the School Tribunal clearly merits interference in the writ jurisdiction of this Court and deserves to be

1 2007(1) Mh.L.J. 597

quashed and set aside and the appeal of the Petitioner filed before the School Tribunal deserves to be allowed by quashing and setting aside the impugned oral termination order.

9 Accordingly, Rule is made absolute by quashing and setting aside the impugned order of the School Tribunal dated 12 July 2016 and allowing Appeal No.24 of 2016 filed by the Petitioners before the School Tribunal, Kolhapur. The impugned oral termination order dated 15 February 2016 issued by Respondent No.2 is quashed and set aside and Respondent Nos.1 and 2 are directed to reinstate the Petitioner in the post of Assistant Teacher in Respondent No.2 School with all the consequential service benefits, such as payment of full back wages from the date of termination till reinstatement, continuity of service, seniority and promotion.

10 The parties to act on an authenticated copy of this order.

(S.C. GUPTE, J.)