

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8323 OF 2018**

Ghansham Eknath Mhaske.

..Petitioner.

V/s.

The State of Maharashtra through

GP and ors.

..Respondents.

Mr. Anurag Jain, advocate for petitioner.

Ms. Sharon Patole, advocate for respondent Nos. 4 and 5.

Mr. Yogesh S. Jadhav, advocate for respondent No. 6.

Ms. Vaishali Nimbalkar, AGP for Respondent Nos. 1 and 2.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 1, 2018.

P. C. :

1 Heard the learned Counsel for the petitioner and the learned Counsel for respondents and the learned AGP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The petitioner herein is aggrieved by the order dated 6th March, 2018 passed by the Deputy Director, Education, Pune, thereby cancelling/withdrawing individual approval granted in favour of the petitioner.

Talwalkar

4 Upon perusal of the impugned order, it appears that the only reason for passing the said order is that the school i.e. respondent Nos. 4 and 5 and the petitioner had not furnished the relevant documents to decide the issue in question, that is the approval of the petitioner.

5 It is pertinent to note that the respondent No. 6 herein had filed a complaint directly to the Administrative Officer, School Board, Pune against the present petitioner on 28/11/2017. The background of the case is that the respondent No. 6 was working with the respondent No. 4 as a teacher. At that time, the school was unaided. That the respondent No. 6 had come across the advertisement dated 23/4/2013 issued by the National Institute of Construction, Management and Research(NICMAR). He had applied in pursuance to the said advertisement as Hotel attendant at NICMAR and he was directed to join latest by 1st July, 2013. On 25/6/2013 respondent No. 6 had resigned from the said school. Learned Counsel for the respondent No. 6 submits on instructions that the said resignation letter dated 25/6/2013 is forged and fabricated. According to the learned Counsel for the respondent No. 6, he was subjected to otherwise termination on 30/6/2013 and therefore, he has approached the School Tribunal challenging his otherwise termination. The said complaint is still pending adjudication.

Talwalkar

The same may take its own course and the learned Tribunal shall decide the matter on its own merits.

6 It appears from the papers that the petitioner had joined as a Assistant Teacher in the unaided school of the respondent No. 4 on 3/7/2007. His case was sent for approval and on 6/3/2012 his post was approved and the approval was from the date of joining i.e. 3/7/2007. The petitioner was appointed as an Acting Head Master vide Letter dated 13/3/2012 on the basis of the seniority list and he was entitled to the salary in the Grade of Rs. 5200-20200 + Grade Pay 2800. The Administrative Officer, School Board, Pune Municipal Corporation had approved his post as a Head Master vide letter dated 23rd July, 2012. The school had attained the status of aided school from March, 2014 and it appears that prior to the said date respondent No. 6 had abandoned the services and joined NICMAR.

7 The learned Counsel for the petitioner has drawn attention of this Court to the messages sent by the respondent No. 6 to the respondent No. 2. On 18/12/2017 respondent No. 2 had written to the Assistant Commissioner of Police, Bund Garden Police Station alleging therein that the approval granted in favour of the petitioner is bogus and sham and that the Institute has not filed all the relevant documents

before the Deputy Director of Education. The respondent No. 6 sent a message to the Deputy Director submitting that the petitioner had not submitted all the relevant documents before the authorities and therefore, he should be suspended within 5 days, or else respondent No. 6 would commit suicide in the office of the Deputy Director. The receipt of the said message is not denied by the learned AGP and it has corroborated the fact that the Deputy Director had informed the Assistant Commissioner of Police about the same. The learned Counsel for the respondent No. 4 upon instructions submits that the school authorities have been intimidated by the respondent No. 6 and otherwise, respondent No. 4 has no grievance against the petitioner.

8 It is pertinent to note that in fact, the petitioner had submitted all the requisite documents before the Deputy Director of Education on 20/2/2018 alongwith the affidavit and the documents required for grant of approval. It appears from the record that on 15/2/2018 school had also tendered all the relevant documents alongwith the muster sheets of June, 2017, July, 2017 and from 2011-2012 seniority list and all other relevant documents. Despite the same, it appears prima facie that because of the intimidation of the respondent No. 6, the Deputy Direction of Education has withdrawn/cancelled approval of the petitioner vide impugned order dated 6th March, 2018. The observation is

that the documents were not submitted. However, paper book indicated that the documents were submitted way back in February 2018. It is pertinent to note that a copy of the said order includes the complaint of the respondent No. 6 and the copy of the same has also been sent to the respondent No. 6. It is in this circumstance, the order deserves to be quashed and set aside.

9 Since it prima facie appears to this Court that the Tribunal has not considered the fact that the petitioner, in fact, had tendered all the documents and has rejected the appeal for want of supporting documents, the appeal deserves to be remanded to the Tribunal to decide the appeal on merits without being influenced by the intervention of the respondent No. 6. In fact, according to this Court, respondent No. 6 has no locus to appear before the Deputy Director of Education, since the issue of approval is between the school and the Deputy Director of Education and the petitioner. In any case, the School Tribunal before whom, the Petition of the respondent No. 6 is pending shall also not be influenced by the observations made in this order. The Deputy Director of Education shall apply his mind to the documents tendered by the respondent No. 4 and petitioner and pass an appropriate order in accordance with law.

Talwalkar

10 The learned Counsel for the petitioner submits that the petitioner is working in the same school. However, his salaries are withheld due to impugned order. The respondent No. 4 shall pay salary regularly to the petitioner during the pendency of the proceeding before the Deputy Director of Education. Salary shall not be withheld as he is working on approved post. The Deputy Director of Education shall decide the issue of approval on or before 30th April, 2019.

11 The petition is allowed in the above terms with the above directions. Rule is made absolute in the above terms. Writ Petition stands disposed of accordingly.

12 In the eventuality an adverse order is passed, the same shall not be implemented for 8 weeks.

[SMT. SADHANA S. JADHAV, J.]

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