

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
C.A.J.
WRIT PETITION NO. 2863 OF 2018

Mr. Aniket Mohan Monde ... Petitioner
 Versus

The State of Maharashtra and Ors. ... Respondents

Mr, S.C. Naidu i/by Shyamsundar Solanki for the petitioner.

Mr. C.P. Yadav, AGP for respondent nos. 1 to 4.

Mr. S.K. Hande for respondent nos. 5 and 6.

CORAM : SHANTANU KEMKAR &
M.S. KARNIK, JJ.
DATE : APRIL 16, 2018

P.C.:

Parties through their counsel.

2. Rule. Rule is made returnable forthwith. By consent, heard finally at the admission stage itself.

3. Challenging the order dated 9.10.2017 Exh."W" passed by third respondent, whereby proposal sent by respondent nos. 5 and 6 for grant of approval to the petitioner's appointment on the post of Junior Clerk has been refused on the ground that before appointing the petitioner, no permission from the office of the second and third respondent was taken, petitioner has filed this petition.

4. According to the learned counsel for the petitioner, GR dated

6.2.2012 in which requirement of taking prior permission of the office of the second and third respondent for filling up the post is prospective. As the petitioner was appointed on 1.12.2011 which is much prior to coming into the force of the said GR, refusal on the said ground that the prior approval was not taken cannot be sustained. In support of his submission, learned counsel for the petitioner has placed reliance on the order passed by the Division Bench of this court in the case of Niraj Rajaram Dhukate and anr. Vs. State of Maharashtra and anr. in W.P. No. 8929 of 2014 decided on 29.4.2016.

5. Learned counsel for the petitioner also submits that before appointing the petitioner, the earlier GR requiring to fill up the post through available surplus/excess junior clerks was duly followed as is clear from the reply filed by the respondent State. He relied upon the reply filed by the respondent state, more particularly paragraphs 3, 4, 5 and 6 of it which read thus :

“3. At the outset, I say and submit that only one post of Jr. Clerk is sanctioned in the Respondent no. 6 School as per the review of posts (staffing pattern) dated 22.05.2008. In the said review of posts, it was mandatory to fill the aforesaid post of Jr. Clerk through the available surplus/excess Jr. Clerks. If no such candidate is available, then the said post to be filled by the respondent no. 6 i.e. Management according to law.

4. I further say and submit that accordingly, one Mr. Ramchandra V. More, who had been declared as excess as

per new staffing pattern was absorbed in the Respondent no. 6 institute on the post of Jr. Clerk and the said Mr. More joined the said Institute on 10.10.2009. Thereafter vide Respondent no. 3's order dated 23.02..2010, the said appointment of Mr. More was cancelled and was relieved from the Respondent no. 6 institute on 03.03.2010.

5. *I further say and submit that as the post of Jr. Clerk in the respondent no..6 institute again felt vacant, the Respondent no. 3 vide order dated 23.02.2010, recommended the appointment of one Mr. Chilwan Naseer Issaq, who was also declared excess as per the new staffing pattern. However, despite of necessary permissions, the said Mr., Chilwan Issaq did not join at the Respondent no. 6.*

6. *Thereafter one Mr. Kewat working as Workshop Assistant in one of the Institute, vide order dated 06.03..2012 was absorbed in the respondent no. 6 institute to the post of Jr. Clerk. However, as Mr. Kewat was brought to the lower pay scale, he did not join the said Respondent no. 6 institute and instead filed a Writ Petition No.3769/2012 in this Hon'ble High Court, praying for protection of his pay. The Hon'ble High Court vide order dated 31.01.2013, granted interim relief to the petitioner and was ordered to be kept along with other similar matters. Hereto annexed and marked "Exhibit R1" is the copy of the order dated 31.01.2013."*

6. Learned counsel for the petitioner has also referred to the reply filed by the respondent nos. 5 and 6 in support of his submission that before appointment of the petitioner, requirement of taking necessary steps as per the said GR was followed and that the present GR is not applicable to his case.

7. Learned AGP has opposed the petition by arguing that the GR dated 6.2.2012 has not been complied with by respondent nos. 5 and 6 before appointing the petitioner as no prior permission was

taken before appointing the petitioner, the approval of the petitioner's appointment has rightly been rejected.

8. Having considered the submissions made by the learned counsel for the parties and having gone through the pleadings as also the GR dated 6.12.2012 and the order passed by this court in the case of Niraj Dhukate (supra), we are of the view that the petition deserves to be allowed. Admittedly the petitioner was appointed much prior to coming into force of the said GR dated 6.12.2012. In the circumstances, in view of the order passed by this court in the case of Niraj Dhukate (supra), the said GR cannot be made applicable to the petitioner's case. As regards the earlier GR in view of the stand taken by the respondent State in paragraphs 3, 4, 5 and 6, it is clear that the respondent nos. 5 and 6 has duly complied with the said GR by appointing various persons before giving appointment to the petitioner. The said employees either left the job or did not join the services. In the circumstances, no fault can be found in the appointment of the petitioner by respondent nos. 5 and 6.

9. In the result, we set aside the impugned order and allow the Writ Petition in terms of prayer clauses (a) and (b).

(M.S. KARNIK, J.)

(SHANTANU KEMKAR, J.)