

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6149 OF 2017

[Mangal s/o Hiranman Ganveer .vs. The State of Maharashtra and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Nitin Jachak, counsel for the petitioner,
Shri A.S. Fulzele, Addl. Govt. Pleader for respondent nos.1 and 2,
Shri V.B. Bhise, counsel for respondent nos.3 and 4.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : MARCH 06, 2018.

By this writ petition, the petitioner seeks a direction against the Education Officer (Secondary), Zilla Parishad, Nagpur to grant approval to the appointment of the petitioner as a Peon-Sewak with effect from 4.5.2016.

According to the petitioner, though the petitioner was appointed as a Peon-Sewak for three years on 3.5.2013 and the Education Officer had granted approval to his appointment by the order dated 31.8.2013 and the petitioner has satisfactorily completed the period of three years as a Peon-Sevak, the Education Officer has wrongly declined to grant approval to the services of the petitioner on regular basis on the ground that in the year 2013-14, a post of Sevak-Peon was not available.

Shri Fulzele, the learned Additional Government Pleader appearing for respondent nos.1 and 2, submitted that the respondent no.4—Management run three schools namely Nirala Vidyalaya Hansapuri, Nagpur, Bangali High School Hansapur, Nagpur and Thakur Green Valley School, Narendra Nagar, Nagpur and the sanctioned strength of Class IV employees in the year 2013-14 was nine, but the management wrongly appointed the petitioner and permitted ten employees to work in the Class-IV posts. It is submitted that it was necessary for the

management to remove junior most employee, which is the petitioner, who was appointed in the year 2013-14. It is submitted a common seniority list was required to be maintained by the respondent no.4 but this was not done and the petitioner was wrongfully continued in service.

Admittedly, the petitioner was appointed after following the due process of selection as a Peon-Sewak on 3.5.2013 for three years and the petitioner has successfully completed his term as a Sewak in May-2016. The services of the petitioner as a Sevak were duly approved by the Education Officer vide order dated 31.8.2013. The petitioner is continued in service as a Sevak after the completion of three years. If the Education Officer was of the view that the management had appointed an excess employee in the Class-IV posts, the Education Officer ought not have granted approval to the appointment of the petitioner by the order dated 31.8.2013. At least, on realising that an employee was appointed in excess, the Education Officer should have taken some steps for ensuring that the approval to the petitioner was cancelled. However, this was not done and the petitioner is continued in service for nearly five years. In this background, it would not be possible for the Education Officer to reject the proposal for grant of approval to the petitioner as a regular Sewak from 3.5.2016 on the ground that in the year 2013-14, the post of Peon-Sewak was not available and the petitioner could not have been appointed.

In the circumstances of the case, if the management has continued more employees than the sanctioned strength, it would be necessary for the Education Officer and the management to take steps to declare the excess employees as surplus or as to absorb them in some other school. Since the Education Officer had granted approval to the appointment of the petitioner as a Sewak for three years, the Education Officer cannot refuse to grant approval to the appointment of the petitioner as a Sevak on

regular basis.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The Education Officer is directed to grant approval to the appointment of the petitioner as a Peon-Sewak on regular basis w.e.f. 3.5.2016. If it is found that more employees than permissible are working in the Class-IV posts in the three schools run by the respondent no.4-management, the management is directed to declare the excess employee as surplus in accordance with law and send the necessary proposal to the Education Officer for grant of approval.

Order accordingly. No costs.

JUDGE

JUDGE

Gulande