

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2464 OF 2017

Manoj S/o Babulal Rathod,
Aged : 31 years, Occu : Service as
Junior Clerk at Vasantrao Naik Madhyamik
Ashram School, Galan (Bk.), Tq. Pachora,
Dist. Jalgaon, R/o Galan (Bk.),
Tq. Pachora, Dist. Jalgaon

.. Petitioner

VERSUS

- 1] The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra
In Social Justice & Special Assistance Department,
Mantralaya, Mumbai – 32.
- 2] The Regional Deputy Commissioner,
Social Welfare, Nasik Region, Nasik
- 3] The Assistant Commissioner,
Social Welfare, Jalgaon
- 4] Hanuman Shikshan Prasarak Mandal,
Galan (Bk.), Tq. Pachora,
Dist. Jalgaon, Through its
President / Secretary

.. Respondents

...
Mr. N.P. Patil Jamalpurkar, Advocate for petitioner
Mr. S.S. Dande, AGP for respondent - State
Mr. P.B. Patil, advocate for respondent no.4
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 23-07-2019

ORAL JUDGMENT (*PER - SUNIL P. DESHMUKH, J.*) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. Petitioner claims that pursuant to advertisement dated 19-01-2010, he had applied for the post of junior clerk in Vasantrao Naik Madhyamik Ashram School, Galan (Bk.) and had been selected and appointed on 15-06-2010. Since then, petitioner has been working as junior clerk in aforesaid school at Galan (Bk.) run by respondent no. 4. In August, 2012, proposal for approval to his appointment had been submitted by the Headmaster. Respondent no. 3 - the Assistant Commissioner, Social Welfare, Jalgaon had forwarded said proposal to respondent no. 2 with recommendation for his approval. However, under order dated 01-07-2016, proposal for approval to appointment of petitioner had been turned down, referring to government resolution dated 16-10-2012 and, thus, petitioner is before this court.

3. Learned counsel for petitioner Mr. Jamalpurkar submits that petitioner has been appointed after following due procedure pursuant to the advertisement issued. He had been continuously working since 15-06-2010. While petitioner had been appointed,

Government resolution dated 16-10-2012 had not been issued and the same would hardly be said to be retrospectively applicable nor it is such case of respondents. He submits that petitioner is qualified for appointment for the post of Junior Clerk. He further submits that the reason given under impugned order about the government resolution and availability of surplus employees is not a sustainable reason for refusal to grant approval.

He places reliance on an order passed on 10-07-2017 by a division bench of this court at principal seat in a group of writ petitions bearing no. 8587 of 2016 and companion matters. He submits that circumstances in present matter were alike as involved in those matters. The group of petitions concerned government resolution dated 02-05-2012 wherein as well similar ban on appointment of Assistant Teachers had been imposed. He further submits that relaxation to the same had been given in respect of backlog of reserved category candidates and subjects of English, Mathematics and Science.

While the recruitment had been prior to the issuance of government resolution, the division bench had observed that ban under government resolution would not be applicable for certain categories, including where recruitment process had commenced prior to issuance of ban. He, therefore, urges to allow the writ

petition and suitable direction in this regard be issued to Regional Deputy Commissioner.

4. Mr. Dande, learned Assistant Government Pleader appearing for respondent - State submits that refusal to grant approval to petitioner's appointment would not be faulted with taking into account government resolution dated 16-10-2012. He refers to that while petitioner claims to have been appointed in 2010, proposal for approval to his appointment had been sent only in August, 2012. He submits that it could not be said that the management had followed proper procedure as would be applicable under the relevant law and in the circumstances, petitioner would not be entitled for approval to his appointment.

He submits that while government resolution dated 16-10-2012 stipulates that appointment of teaching and non-teaching staff has to be made with the permission from Regional Deputy Commissioner and Regional Deputy Commissioner has to verify, as to whether candidates are available from surplus list and after following procedure, the permission is granted. However, in present case, according to him, no such procedure has been followed by the management. He submits that while the proposal had been submitted in August, 2012 and having regard to that terms and conditions under Government resolution dated

16-10-2012 which had been issued, the decision taken under impugned order could seldom be liable to be faulted with.

5. Having heard learned counsel for appearing parties as aforesaid, there does not appear to be any particular dispute about that before issuing appointment order to petitioner, an advertisement had been issued in newspaper inviting applications for the post of junior clerk with educational qualification S.S.C. and petitioner had applied and was selected and appointed on 15-06-2010. Onward forwarding of his proposal for approval was in the realm of management and it appears that same had been submitted in August, 2012 before government resolution dated 16-10-2012 had been issued.

Petitioner's proposal had been recommended by respondent no. 3 - Assistant Commissioner, Social Welfare, Jalgaon under communication dated 22-02-2013, particularly referring to that petitioner had been appointed on a post falling vacant on retirement of an erstwhile employee and that proper recruitment procedure had been followed while making his appointment. It also communicates that petitioner is possessing educational qualification H.S.C. and also is a typist with speed of 40 and 30 words per minute in English and Marathi, respectively. Additionally, he has passed M.S.C.I.T. Thus, he possesses proper

educational qualification for the post of junior clerk. To this, there had been no response whatsoever till communication dated 01-07-2016 addressed to the Headmaster Vasantrao Naik Madhyamik Ashram School, Galan (Bk.), referring to that taking into account the government resolution dated 16-10-2012 and letter dated 06-12-2012 that until 100% absorption of surplus employees, approval would not be given and it has been stated that in case of breach, appropriate departmental action would be taken against erring official. Referring to letter dated 01-10-2015, it has been stated, in such a case, though appointments have been given before 16-10-2012, yet, granting approval to said appointments would be not in accordance with law.

It appears that the proposal had not been decided on until 01-07-2016. In the process, lot of relevant considerations appear to have been ignored and order impugned appears to be guided by government resolution dated 16-10-2012 and communications referred to above. Though respondents contend that submission of proposal for approval of petitioner after his appointment had been made after a long duration, yet, the same is not disputed to be before Government resolution dated 16-10-2012 and that it was recommended since being by following due procedure.

6. This court had an occasion to deal with such a situation in writ petition no. 1935 of 2017 with writ petition no. 1950 of 2017 vide judgment dated 10-07-2017. Writ petitions no. 1935 of 2017 and 1950 of 2017 were treated as per directions given by division bench of this court in writ petition No. 3708 of 2017 in paragraph 8 thereof, reading thus,

“ 8. Considering the above, the impugned order is quashed and set aside. The respondent-Education Officer shall consider the proposal seeking approval to the appointment of petitioners afresh and shall not reject it on the ground on which the impugned order is passed. The Education Officer is directed to consider all other aspects of the matter. The said proposal shall be decided expeditiously preferably within four months.”

7. As also, it would be pertinent to refer to observations of the division bench in said decision in paragraphs no. 6 and 7 reading thus,

“ 6. Almost after about a year, after the last candidate was appointed, surplus candidate was referred, no reason is forthcoming from the Education Officer for not forwarding the surplus candidates for absorption in the respondent-Institution though large number of vacancies were available. It was a lethargy on the part of the Education Officer in not sending the surplus candidates immediately though Education Officer had the knowledge of the vacancies with the respondent-Institution thereby frustrating the scheme of absorption of surplus candidates. ”

8. In the circumstances, having regard to the order passed by division bench of this court at principal seat in the group of writ petitions referred to above as well as order dated

10-07-2019 passed by division bench of this court in writ petitions no. 1950 of 2017 and 1935 of 2017, we deem it appropriate to restore proposal of petitioner to its position, as had been subsisting before 03-06-2016 and 01-07-2016, for reconsideration afresh taking into account the relevant aspects, particularly the orders passed by the High Court referred to above.

9. Keeping all the points open, save and except that proposal of petitioner shall not be rejected on the grounds on which impugned order was passed. Writ petition accordingly is allowed and is disposed of.

10. Rule is made absolute accordingly.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/