

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5697 OF 2004

Dnyaneshwar s/o Nagorao Bhosale
Age 28 years, occ. Nil,
R/o. Deoghar Building
Ramrao Pawar Marg, Shrinagar
NANDED

...Petitioner

versus

1. Sanjeevani Shikshan Prasarak Mandal,
Throguh its Secretary,
Vishali building
Vasant Nagar Chowk,
Nanded
2. The President,
Sanjeevani Shikshan Prasarak Mandal,
Vaishali Building
Vasant Nagar Chowk,
Nanded
3. The Head Master,
Gokul Vidyalaya,
Yelegaon (Gawali),
Via Akhada Balapur,
Tq. Kalamnoori, District Hingoli
4. The Education Officer (Secondary),
Zilla Parishad, Hingoli
5. P. D. Shinde,
Age 42 years, Occ. Service
R/o. C/o. Gokul Vidyalaya,
Yelegaon (Gawali),
Via Akhada Balapur, Tq. Kalamnoori
District Hingoli
6. Ramakant Kerbaji Dhawale
Age 39 years, Occ. Service
R/o. Rajeshri Shahu Vidyalaya

Akhada Balapur, Tq. Kalamnoori
District Hingoli

...Respondents

.....
Mr. K.M. Nagar, advocate for the petitioner
Mr. G.K. Salve, advocate for respondent Nos. 1 to 3 and 5
Mr. A.B. Chate, A.G.P. for respondent No.4.

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CORAM : V. K. JADHAV, J.
DATED : 21st NOVEMBER, 2019

JUDGMENT :-

1. Heard both sides.
2. By way of this petition, the petitioner has challenged the judgment and order dated 28.06.2004 passed by the Presiding Officer, School Tribunal, Aurangabad in Appeal No. 87 of 2000 and further sought directions to the respondent that the oral termination dated 04.01.2000 effected by respondent No.3 be quashed and set aside and the petitioner be reinstated in Gokul Vidyalaya, Yelegaon (Gawali), Tq. Kalamnoori, District Hingoli with all consequential benefits arising therefrom.
3. It is the case of the petitioner that he possesses the qualification of S.S.C. A.T.D. (Art Teachers Diploma). On 13.7.1998 the petitioner came to be appointed in respondent No.3 school, run by respondent Nos. 1 and 2, as A.T.D. teacher. After his appointment, the proposal for grant of approval came to be submitted to respondent No.4 Education Officer, alongwith the resolution passed by the Trust. Even in the subsequent year, the petitioner's

services came to be continued. On 17.7.1999 the name of the petitioner was recommended by respondent No.3 Head Master for acting as Examiner to the Director of Art, Maharashtra State. The petitioner was also asked to open an account in the District Central Co-operative Bank, Branch Potra. However, respondent Nos. 1 to 3 did not deposit any amount of salary in the said account. On 11.12.1999 the petitioner was relieved by respondent No.2 for taking part in the workshop conducted at Aurangabad. However, the respondent No.3 all of a sudden, without assigning any reason asked the petitioner not to sign the muster roll from 04.01.2000. The petitioner being aggrieved by said oral termination order effected by the respondent No.3, had approached the School Tribunal, Aurangabad by filing appeal No. 87 of 2000.

4. Respondent Nos. 1 to 3 filed their say in the appeal and contended that the petitioner was never appointed in the said school and thus the question of his termination does not arise. It was also contended that one Mr. P.D. Shinde is working in the school since 1995 and therefore, the petitioner can not be adjusted and further sought dismissal of the appeal. The respondent No.4 Education Officer also filed some documents before the School Tribunal, the resolution of the Trust as well as the proposal for approval wherein the name of the petitioner appears. The learned Presiding Officer of the School Tribunal by judgment and order dated 28.6.2004 has dismissed the appeal filed by the petitioner. Hence, this writ petition.

5. Learned counsel for the petitioner submits that respondent Nos. 1 and 2 have issued an advertisement dated 8.7.1998 for filling up the post of A.T.D. Teacher, which was mentioned in Sr. No. 7 in the said advertisement. The petitioner had applied to the said post as per the advertisement and by following due process of law the petitioner came to be appointed as an Art Teacher vide appointment order dated 8.7.1998. After the appointment, the proposal for grant of approval to his appointment was sent by the management to the respondent No.4 Education Officer. The appointment was continued and it was not for limited period. Even the pay scale has been mentioned in the appointment order. Learned counsel submits that when in the advertisement, it is mentioned that the post of Art Teacher is vacant still the Tribunal has observed that there is no documentary proof that the post of Art Teacher is sanctioned post. Thus, the finding recorded by the learned Tribunal is contrary to the record. The finding of the Tribunal that the petitioner was working on honorarium is baseless, when in the appointment order itself the pay scale is mentioned. The proposal for approval is sent by the management still the learned School Tribunal has observed that there is no documentary proof that the proposal is sent and the said observations are perverse. In fact, the Education Officer denied the approval on the ground that the proposal sent is not in proper format. Therefore, it is duty of the management to send the proposal in the proper format and for that matter, the petitioner would not suffer. It is

pertinent to note that the proposal is denied on the technical ground and not returned or denied on any other ground like non availability of vacancy or sanctioned post or like that. Therefore, the finding of the learned Tribunal is perverse. The letter dated 05.09.2003 prepared by the school authority is false when the petitioner has not given any such letter.

6. Learned counsel for the petitioner submits that from the information sought by the petitioner under the provisions of Right to Information Act 2005, it is revealed that respondent No.6 never performed any activities during the period from 2008 to 2012 as he was never appointed with the respondent school and therefore, it is clear that the appointment of respondent No.6 is illegal. The affidavit in reply filed by the Deputy Education Officer, Zilla Parishad, Hingoli also supports the same. The Education Officer issued notice dated 29.01.2015 to respondent Nos. 1 to 3 and thereby directing to produce the record in respect of appointment of respondent No.6. The advertisement issued by respondent Nos. 1 and 2 does not indicate that the post on which respondent No.6 is appointed and so also it is not possible on the same day how the interview was held by the same authority and the same fact is also mentioned by the Education Officer in his reply. Learned counsel for the petitioner submits that respondent No.4 Education Officer issued notice to respondent Nos. 1 to 3 and 6 calling upon them to produce all relevant documents. However, till today the said respondents have

not produced any single document in respect of appointment of respondent No.6. Learned counsel for the petitioner submits that the petition may be allowed.

Learned counsel for the petitioner in order to substantiate his submissions, placed reliance on the following judgments:-

- i) Ram Avadh Mahel vs. Sivdutta Educational Trust, reported in LAW (BOM) 2007-8-26,
- ii) Hindustan Education Society and Ors. vs. Shaikh Kaleem Shaikh Gulam Nabi and others, reported in 1998 (2) Bom.C.R. 146,
- iii) Anna Manikrao Pethe vs. The Presiding Officer, School Tribunal and others, reported 1998 (4) Bom.C.R. 565,
- iv) Asha Shamkumar Patil vs. Sadhana Rajan Kamble, reported in 2007 (6) Bom.C.R. 402
- v) Haridas Tanaji Bhende vs/ Dr. B.R. Ambedkar Primary School and others, reported in 2010 (Supp.) Bom.C.R. 98,
- vi) Priyadarshani Education Trust and Ors. vs. Ratis (Rafia) Bano Abdul Rasheed, reported in 2007 (6) Mh.L.J. 667,
- vii) Unreported judgment of this Court in the case of Machodra S.S. Jalna vs. Ankush Nivrutti Kajake, in writ petition No. 5038 of 2018, dated 08.09.2016.

- viii) Unreported judgment of this court in the case of Savake Pandit Holkar vs, The State of Maharashtra and others, in writ petition No. 112 of 1998 decided on 09.02.2017.

7. Learned counsel for respondent 1 to 3 and 5 submits that the respondents never appointed the petitioner by following the procedure as contemplated in M.E.P.S. Act and Rules and therefore, no question arise for termination of his services. There is no appointment letter in writing issued by the management to the petitioner or the management has never passed any kind of resolution for appointing that petitioner so also no any proposal for grant of approval to the appointment of the petitioner is forwarded to the Education Officer. The said post is reserved for Scheduled Caste category and the petitioner is from open category, hence, he cannot claim the reserve post. The petitioner was allowed to work on honorarium for experience purpose at his request as an adjustment. There is no approval of Education department. The contention of the petitioner that he was working from 13.07.1998 to 04.01.2000 is incorrect. Learned counsel submits that the School Tribunal has framed issues in regards to his appointment. The issues are discussed and decided. Respondent No.1 management has issued an advertisement inviting the applications for the post of A.T.D. Teacher and by following due process of law, respondent No.6 came to be appointed. The School Tribunal has passed a reasoned order thereby dismissing the appeal of the petitioner. There is no substance in the writ petition and the petition may be dismissed.

8. I have also heard the learned A.G.P. for respondent No.4 Education Officer.

9. It is the case of the petitioner that he was appointed as an Art Teacher in respondent No.3 school by the management by order dated 13.7.1998 on permanent basis and he worked as an Art Teacher w.e.f. 13.7.1998 till 4.1.2000. Per contra, it is the case of the respondents that they never appointed the petitioner as an Art Teacher, however, permission was given to the petitioner to teach in respondent No.3 school for temporary period on honorarium basis for getting the experience, as the candidate from reserved category was not available.

10. I have heard learned counsel for the petitioner, learned counsel for respondent Nos. 1 to 3 and 5 and learned AGP for respondent No.4 at length. With their able assistance I have carefully perused the averments made in the memo of petition, the annexures thereto and the affidavit-in-reply filed by the respondents.

11. On perusal of photo copy of the appointment order dated 8.7.1998, it appears that the petitioner was appointed as an Art Teacher vide order dated 8.7.1998 in the pay scale of Rs.1200-2040

w.e.f. 13.7.1998. However, as rightly observed by learned Presiding Officer, School Tribunal, the said appointment order does not disclose that the petitioner was appointed as an Art Teacher. The learned Presiding Officer, School Tribunal has also given reference to the extract of the pay scale register for the month of July, 1998 produced by the respondent management alongwith their written statement, wherein no any specific pay scale against the name of the petitioner has been mentioned. It further appears that the petitioner claims that his appointment was made after following due procedure as contemplated under Section 5 of the M.E.P.S. Act and for that propose placed on record the advertisement published by the respondent management in the daily newspaper "*Godateer Samachar*". On perusal of photo copy of advertisement, it appears that on 8.7.1998 the said management shown to have published the advertisement thereby calling applications from the eligible candidates to fill up various posts in the school and eligible candidates were requested to remain present on 11.7.1998 alongwith original documents. It is pertinent to note that though the eligible candidates were called on 11.7.1998 for interview alongwith original documents, the aforesaid appointment order shown to have been issued on 08.07.1998. In view of the same, I am in agreement with the observations made by learned Presiding Officer, School Tribunal that the aforesaid appointment order dated 08.07.1998 appears to be vague. It is also fact that if the petitioner was appointed as Art Teacher on clear and permanent vacancy, the pay scale against the

name of the petitioner should have been mentioned in the pay scale register maintained by the respondent management. There is no clear evidence that at the time of alleged appointment the post of Art a Teacher in the respondent No.3 school was clear, sanctioned and permanent post. Even on one occasion, the petitioner himself has referred his status as an Art Teacher on honorarium basis. So far as the approval part is concerned, the Education Officer has informed to the School Tribunal that his office never received any appointment order of the petitioner or the proposal for approval to his post from the management. Learned counsel for the petitioner has argued mostly on illegal appointment of respondent No.6. However, the same is not necessary to be considered in this writ petition, when the petitioner has challenged his termination before the Tribunal by ascertaining himself as permanent teacher of respondent No.3 School. In the given set of facts, the cases relied upon by the learned counsel for the petitioner cannot be made applicable in the present case. Thus, I find no substance in this writ petition. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)