

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9261 OF 2017

Shivaji S/o Rajaram Jadhav,
Age : 41 years, Occu : Service,
R/o. Pimpri Raja, Tq. & Dist. Aurangabad .. Petitioner

Versus

- 1] State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai - 32
- 2] Education Officer (Secondary),
Zilla Parishad, Aurangabad
- 3] Shikshan Prasarak Mandal,
Pimpri Raja, Tq. & Dist. : Aurangabad
Through its President
- 4] Saraswati Bhuvan Secondary
& Higher Secondary School,
Pimpri Raja, Tq. & Dist. Aurangabad,
Through its Head Master .. Respondents

...
Mr. Hrishikesh A. Joshi, Advocate for petitioner
Mr. G.O. Wattamwar, AGP for respondent - State
Mr. S.V. Natu, Advocate for respondents no. 3 and 4
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.

DATE : 06-08-2019

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

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

2. A brief reference to factual aspects would be a facility to appreciate the matter in its proper prospect.

3. An advertisement was issued by respondent no. 3 - management to fill up post of senior clerk lying vacant in respondent no. 4 - school. Petitioner possessing educational qualifications M.A., M.Lib., B.Ed. and M.S.C.I.T. applied for appointment to said post pursuant to the advertisement. In the selection process, petitioner was selected and appointed as senior clerk in respondent no. 4 - school initially for a period of three years on probation. A proposal accordingly had been forwarded to office of the Education Officer (Secondary), Zilla Parishad, Aurangabad. On completion of three years period of probation, school committee finding performance of petitioner satisfactory, had resolved to confirm appointment of petitioner as senior clerk. Order of confirmation of appointment of petitioner as senior clerk had been issued under letter dated 21-02-2015. Respondent no. 4 sought permanent approval to appointment of petitioner. Said proposal had been pending for a long time with respondent no. 2. As no decision was being taken, petitioner had approached this court under a writ petition bearing no. 2859 of 2017. This court had directed to dispose of pending proposal for approval of petitioner's appointment. Subsequently, respondent no. 2 had

passed order dated 15-04-2017 rejecting approval to appointment of petitioner, referring to that post of senior clerk is to be filled in by promotion under the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Post of senior clerk is to be filled in by promoting a junior clerk. Petitioner's appointment has been made by following direct recruitment process and, thus, request to grant approval to appointment of petitioner is difficult to be acceded to and has accordingly rejected the same. Petitioner has assailed said rejection under present writ petition.

4. Learned counsel Mr. Hrishikesh A. Joshi submits that impugned order is unsustainable on more counts than one. In the approved staffing pattern dated 06-11-2012, one clear, regular post of senior clerk had been admissible in respondent no. 4 - school. Said post had been occupied earlier by one Mr. N.S. Joshi who had retired on superannuation. Junior clerk Mr. Parve, on account of his own difficulty, had been unwilling to accept promotional post of senior clerk in respondent no. 4 - school. Under the circumstances, according to learned counsel, advertisement had been issued by respondents no. 3 and 4 on 08-02-2012 to fill up the post of senior clerk lying vacant. It is this post which is occupied by petitioner legitimately and under a regular and proper recruitment process. He adverts to that junior

clerk Mr. Parve had subsequently died. He submits that these factual aspects have not been denied at all by respondents no. 1 and 2. In the circumstances, the impugned rejection to grant approval to appointment of petitioner is not only pedantic, redundant and vacuous but also fails to withstand test of reason and rational. He, therefore, submits that while it cannot be denied that the post is permanent and lying vacant on superannuation of the erstwhile incumbent and there had been no suitably qualified and eligible employee available with respondents no. 3 and 4, recruitment procedure which had been adopted and undertaken to fill up said post would not be liable to be faulted with on any count.

5. Learned counsel Mr. S.V. Natu appearing for respondents no. 3 and 4 subscribes to the submissions on behalf of the petitioner.

6. Learned Assistant Government Pleader, however, purports to oppose the petition submitting that going by the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the order would not be liable to be faulted with referring to Schedule 'B' part IV captioned 'Qualifications for non-teaching posts in Schools'. Senior clerk appearing at serial no. (2), thereunder also refers to that the post be filled in by promotion from amongst persons holding the posts

of junior clerks on the basis of seniority-*cum*-merit. Thus, looking at the same, the impugned communication has been issued.

7. From aforesaid, it emerges that factual position is not disputed that in the school under the staffing pattern, a single post of senior clerk had been admissible. One Mr. Joshi, who had occupied the post, had retired on superannuation. The next person who could have been promoted to said post - Mr. Parve, who had been junior clerk in respondent no. 4 – school, is stated to have declined to accept promotion. In the circumstances, the advertisement had been issued for filling up the post of senior clerk and in the selection process, petitioner had been selected and appointed. It is not the case by parties that there was any other incumbent available for being appointed as senior clerk in the school who had been qualified and eligible pursuant to Schedule 'B' part IV serial no. 2.

8. The situation, it appears lends lot of substance to submissions on behalf of petitioner. Impugned order appears in the circumstances, to be perfunctory and without application of mind to relevant aspects. Approach under the impugned communication under the circumstances, appears to be unsustainable. Respondents no. 3 and 4 appear to have followed the procedure, as would normally be resorted to while making

regular recruitment in absence of qualified and eligible candidate to fill up the promotional post.

9. We, therefore, deem it appropriate to allow the writ petition. Writ petition accordingly stands granted in terms of prayer clauses (B) and (C) and is disposed of. Rule is accordingly made absolute.

10. It is expected that the action would be taken in right earnest and expeditiously.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/