

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9181 OF 2016

Shaikh Firdos Ahemad Yousuf Ahemad. Petitioner

Versus

The State of Maharashtra & others. Respondents

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Mr. V.S. Panpatte, Advocate for the petitioner.

Mr. K.S. Patil, A.G.P. for the State.

Mr. S.R. Choukidar, Advocate for respondent No.5.

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CORAM : **PRASANNA B. VARALE &
AVINASH.G. GHAROTE, JJ.**

DATE : 3 September 2019.

ORAL ORDER :-

. Heard learned Counsel Mr. Panpatte for the petitioner, Mr. K.S. Patil, learned Addl. Government Pleader for the respondent / State and Mr. Choukidar, learned Counsel for respondent No.5.

2. By way of the present petition, the petitioner challenges the communication dated 28.07.2016 issued by the President / Secretary of Sant Gadge Baba Shikshan Sanstha, Kandhar, Taluka Kandhar, District Nanded. This communication is forwarded to the petitioner on the backdrop of

the decision dated 01.03.2016 and communication dated 10.04.2016.

3. Mr. Panpatte, learned Counsel appearing for the petitioner vehemently submitted that in total failure to consider the facts in its proper perspective, only on erroneous assumption and presumption, the services of the petitioner are tried to be terminated. It was the submission of Mr. Panpatte, learned Counsel for the petitioner that the petitioner, was appointed on a post of "Shikshan Sevak" by following due procedure and assessing the merit of petitioner and after his appointment the petitioner who had worked continuously for more than 8 years and 9 months with clean and unblemished record, is subjected to the exercise of termination. Mr. Panpatte invited our attention to the documents placed on record namely copy of newspaper "Dainik Mahasagar" and in the issue of this newspaper dated 10.10.2010 wherein an advertisement was published, calling upon the eligible candidates for appointment of one post of 'Shikshan Sevak' to teach mathematic subject. Then our attention was invited to the copy of proceeding book to submit that comparative merit of the petitioner was assessed and the petitioner was selected in that process and it was resolved to appoint the

petitioner. This Resolution is passed by the majority members of the Institution and accordingly appointment order was issued in favour of the petitioner on 01.01.2011. Petitioner joined duties in Mahatma Phule Vidyalaya, Kandhar, District Nanded on 01.01.2011. Mr. Panpatte, learned Counsel for the petitioner also invited our attention to the approved staffing pattern under the signature of the Education Officer (Secondary) and this approval is placed on record at Exh-E. Then there are also subsequent approvals for the years 2011-2012, 2012-2013 and 2013-2014. It was then submitted by the learned Counsel for the petitioner that in view of increase in the strength of the students the Institute also made a request for additional posts. The said communication is also placed on record at Exh-F.

4. It was the submission of learned Counsel for the petitioner that Institute preferred Writ Petition in this Court as there was no decision on the proposal for additional posts. The Division Bench of this Court in Writ Petition No.5773 of 2012 and Writ Petition No.9794 of 2015 directed the respondent State Authority namely Principal Secretary, School Education to take appropriate decision within a stipulated period. Then by inviting our attention to the communication forwarded to the Education

Officer (Secondary) dated 10.04.2016, learned Counsel for the petitioner submitted that the Institute was before the Principal Secretary and Principal Secretary, on hearing, permitted the Institute to fill up the posts from the available excess teachers. The communication further shows that that the said post was already filled in by the Education Institute and in case the Institute follows the direction, the Institute necessarily will have to take decision about the service of employee who is already serving with the Institute. By the said communication dated 10.04.2016, the Institute also cautioned the Education Officer (Secondary) that in case of such termination, there is every possibility that the earlier appointed teacher may approach the Court of law. The Institute also submitted explanation to the Education Officer by communication dated 05.05.2016 reiterating the facts that in the year 2011 according to the approved staffing pattern the Institute, by publishing an advertisement in newspaper, filled in the post of a candidate having due qualifications. Then by communication dated 18.06.2016 the Institute informed the Education Officer that the petitioner is already appointed on 01.01.2011 and earlier request was made for grant of approval. A request for approval was then reiterated by

inviting attention of Education Officer to all the documents annexed to the communication dated 18.06.2016.

5. Mr. Panpatte, learned Counsel for the petitioner then submitted that giving go-bye to all these communications, the Education Officer, by communication dated 25.07.2016, directed the Institute and Headmaster of Mahatma Phule Vidyalaya, Kandhar to absorb one Shri Mundhe Keshav Maruti who was discharging his duties as an Assistant Teacher in a School namely Sant Namdeo Madhyamik Vidyalaya, Bori, Taluka Kandhar, District Nanded. Learned Counsel Mr. Panpatte, by placing heavy reliance on the judgment of this Court in Writ Petition No.8587 of 2016 and other connected petitions, submitted that the Division Bench while considering the issue of rejection of approval was pleased to quash and set aside the orders passed by the Education Officer and three categories are carved out by the Division Bench for protection of services and granting approval to the teachers. Mr. Panpatte, by inviting our attention to para-9 of the judgment of Division Bench in Writ Petition No.8587 of 2016 submitted that the petitioner would fall in category 'B' as the petitioner was appointed to teach mathematics subject. It was also the submission of Mr. Panpatte that the decision of Division

Bench in Writ Petition No.8587 of 2016 is subsequently followed by this Court. He also invited our attention to the order of this Court dated 20.08.2018 in Writ Petition No.3945 of 2017.

6. Mr. K.S. Patil, learned Addl. Government Pleader appearing for respondent No.4 Education Officer (Secondary), Zilla Parishad, Nanded opposes the petition.

7. Mr. Choukidar, learned Counsel for respondent No.5 invited our attention to the reply filed on behalf of respondent Nos.5 and 6 through Chetan Daulatrao Kendre, Secretary of Sant Gadge Baba Shikshan Sanstha, Kandhar. It may not be out of place to mention here that to assess the merits of claim of the petitioner, this Court permitted Mr. Choukidar, learned Counsel for respondent No.5 to place on record the relevant documents, by an order dated 29 July 2019. Mr. Choukidar, learned Counsel appearing for respondent No.5 invited our attention to the copy of newspaper "Daily Mahasagar". Perusal of the advertisement published in this newspaper shows that the eligible candidates were called upon alongwith original and true copies of the documents of their academic qualifications on 30.12.2010. Mr. Choukidar also invited our attention to the copies of applications submitted by all such eligible candidates alongwith the

documents to show their academic qualifications. Then Mr. Choukidar invited our attention to the statement enlisting these candidates in a tabular form showing their academic qualifications, their social status and their addresses. Our attention was also invited to comparative assessment of these candidates in a tabular form under the title “मुलाखत तक्ता” (loosely translated as “interview sheet”).

8. Needless to state that the petitioner has placed on record the resolution dated 31.12.2010 wherein there is a reference of the petitioner as a “selected candidate” and then it also states that the petitioner be appointed from 01.01.2011 and his proposal be forwarded to the Education Officer, Zilla Parishad, Nanded for grant of approval as expeditiously as possible. Considering all these facts, we find merit in the submission of Mr. Panpatte, learned Counsel appearing for the petitioner.

9. The petitioner was appointed from 01.01.2011 to teach mathematic subject and the petitioner discharged his duties as a Teacher for considerable length of period i.e. more than 8 years. Mr. Panpatte was also justified in submitting before this Court that the petitioner can safely be placed in the category 'B' as per

the decision of Division Bench in Writ Petition No. 8587 of 2016 and other connected petitions, as the petitioner was appointed to teach mathematics subject.

10. It was the submission of Mr. Choukidar, learned Counsel appearing for the Institute that in view of the Resolution dated 31.12.2010 a proposal for grant of approval to the post of petitioner was immediately submitted to the office of Education Officer and it was pending for decision for a considerable length of time and suddenly in the year 2016 the Education Officer passed the order of absorption of another employee Mr. Mundhe. There is no justifiable explanation on behalf of respondent No.4 Education Officer (Secondary), Zilla Parishad, Nanded for long pendency of the proposal seeking approval to the post of petitioner. As such, we see no reason for not accepting the submission of Mr. Choukidar, learned Counsel appearing for respondent No.5-Institute that inspite of submitting proposal to the Education Officer some time in the year 2010-2011, the office of the Education Officer was sitting idle on the proposal without there being any decision for length of five years and then an attempt is made by the Education Officer to thrust the excess teacher in the Institute by an order dated 25 July 2016.

11. Considering the above aspects, we are of the opinion that learned Counsel for the petitioner has made out a case for interference and resultantly the petition needs to be allowed. The petition is accordingly allowed in terms of prayer clause 'B' and the decision dated 01.02.2016 passed by the respondent No.1 (Exhibit 'M'), the order dated 25.07.2016 issued by the respondent No.4-Education Officer (Exhibit 'Q') and the notice dated 28.07.2016 issued by the respondent No.5 (Exhibit 'R') are quashed and set aside.

12. Needless to state that the proposal which is submitted to the Education Officer for grant of approval to the post of the petitioner be decided by the Education Officer as early as possible and not later than 12 weeks from today.

(AVINASH.G. GHAROTE, J.)

(PRASANNA B. VARALE, J.)

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