

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6813 OF 2014

Mr.Sachin Suresh Shidore	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.K.K.Malpathak for the petitioner.

Mr.V.M.Mali-AGP for respondent no.1.

Mr.Vijay Killedar for respondent no.2.

Mr.Milind Deshpande for respondent
nos. 3 and 4.

CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.

DATE :- MARCH 1, 2019

P.C. :-

1. We have heard both sides. Pursuant to our earlier order, respondent no. 2 is present in the court with original records. She has also affirmed an affidavit and that is tendered by Mr.Killedar. We have taken that on record.

2. This is a case where the petitioner says that pursuant to a duly notified vacancy and advertised by the management (respondent nos. 3 and 4), he applied for being appointed as a clerk/non-teaching staff. The petitioner says that pursuant to the

advertisement and his application, the petitioner was called for an interview. He was selected by a regular process and was issued an appointment order on 23rd February, 2010. He was appointed as a Shikshan Sevak for a period of three years. The post advertised was of Junior Clerk. The petitioner also resumed duties and thereafter, the management decided to seek approval to his appointment. That is in terms of the staffing pattern. The proposal was forwarded on 18th March, 2010, but the same was not considered on the ground that the management has failed to absorb a surplus teacher.

3. The petitioner says that his appointment was effective from 23rd February, 2010. The management forwarded the proposal on 18th March, 2010. On that proposal, a vague answer was given by respondent no. 2 in which it was mentioned that in the private aided primary school, a surplus non-teaching staff/Shikshan Sevak/Shikshaketar Sevak has to be accommodated and absorbed. Consequently, the petitioner's appointment cannot be approved.

4. The petitioner says that this answer is in the communication dated 19th July, 2010, whereas, there is no communication prior to 18th December, 2010 with the management and therefore, there was no surplus teacher/non-

teaching staff waiting to be absorbed in the Laxmibai Kirloskar Primary School, Solapur. It is for the first time and for the academic year 2010-11 that the lady, namely, Kanchan Shinde was directed to be absorbed as a clerk. It is stated that even the communication at page 28 of the paper book records that the petitioner has been working from 23rd February, 2010. The management then addressed a communication on 29th April, 2011, whereafter, it is the case of the petitioner that on 3rd January, 2012, the staffing pattern for the academic year 2011-12 was approved by the second respondent, which demonstrates that there was one sanctioned post of a clerk. Evidently, that was filled in by the appointment of the petitioner and at least from the academic year 2011-12, the petitioner's appointment could have been approved.

5. The petitioner is supported in his stand by the management-respondent nos. 3 and 4. However, Mr.Killedar, relying upon the affidavit of the second respondent, submits that the petitioner's appointment cannot be approved. He relies upon the proviso to sub-section (1) of section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to urge that the same is mandatory. It is for the management to ascertain prior to advertisement whether there is

a surplus teacher or a non-teaching staff member who is awaiting absorption. It is only when the Administrative Officer gives a clarification about this position of a surplus employee that the management can go ahead and fill up the vacant permanent post by the procedure prescribed in Sub-Rule (8) of Rule 9 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Rules, 1981. Once the management has defaulted in this behalf, then, we must uphold the impugned order.

6. After having heard both sides, we do not think that we can agree with Mr.Killedar. Firstly, we find that there was an advertisement inserted on 3rd December, 2009. May be the management has defaulted and has not taken permission or has not ascertained from the second respondent as to whether any surplus employee and waiting to be absorbed is directed to be accommodated or should be accommodated by the management at the concerned primary school. Secondly, and importantly, the petitioner applied, was interviewed, appointed on 23rd February, 2010 and approval to his appointment was sought by the management by the communication of 18th March, 2010. Thirdly, that communication was replied by the impugned letter, copy of which is at page 26 of the paper book on 19th July, 2010. Until 18th December, 2010, there is nothing on record which would indicate

that a surplus teacher or a non-teaching staff was directed to be absorbed in the primary school of the third respondent and that they had been intimated to this effect. There is no advance or prior intimation and therefore, the management went ahead with the selection of the petitioner. If on 18th December, 2010, the surplus clerk Kanchan Shinde was to be absorbed and effective from 21st December, 2010, then, in the absence of other relevant material, we cannot see how approval to the petitioner's appointment can be refused for the alleged lapse on the part of the management in not absorbing Kanchan Shinde.

7. Now Mr.Killedar would say and finally that the management did not allow the said Kanchan Shinde to report. This is but an oral assertion. Even para 5 of the affidavit in reply does not say that after the order of 18th December, 2010, the employee Kanchan Shinde was not absorbed by the management and that the management refused to do so. There is no deliberate or intentional act attributed to the management in refusing to absorb this employee and it is not open to the Administrative Officer to blame this management after he woke up only on noticing that the petitioner has already been appointed. This has rendered hardly any assistance to the surplus employee, much less Kanchan Shinde. Prior to Kanchan Shinde, there is no

absorption directed insofar as the management of Laxmibai Kirloskar Primary School, Solapur. In these circumstances, we do not think that the second respondent can make a capital of the alleged lapse on the part of the management.

8. Once we find that the petitioner is not at fault in the whole process and has been diligently and honestly working for the past eight years, then, we do not think that we should refuse the relief to him. We can grant the relief also because of the fact that the staffing pattern for the academic year 2011-12 was approved, as is evident from page 30 of the paper book. In this academic year, there was a sanctioned post of Junior Clerk. Once Kanchan Shinde reported or attempted to report or was not allowed to work, but the management was directed to absorb her and still continued with the appointment of the petitioner, then, possibly a different situation would have emerged. That is not so and Kanchan Shinde is now stated to be working in some other school.

9. In the above circumstances, we proceed to quash and set aside the impugned communication. We declare that the petitioner's services stand approved with effect from the academic year 2011-12, meaning thereby, from 1st June, 2011. On the basis of the approval order which shall be formally issued within a period of two weeks from today, the differential

salary/arrears be released in favour of the petitioner and thereafter, the petitioner's salary in terms of the applicable pay-scale shall be released and disbursed to him. The necessary financial grant shall be made admissible by the second respondent to the third respondent-management.

10. The writ petition is allowed in the above terms. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)