

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12523 OF 2016

1. Sandeep Balwantrao Babar,
age about 25 years,
Occ: Shikshan Sevak, working
in Shri Ashokrao Desai Krishi-
vidyalaya, Alegaon, Taluka
Sangola, Dist: Solhapur.

2. Babita Uttam Burgute,
age 24 years, Occupation:
Assistant Teacher, working
in Shri Ashokrao Desai Krishi-
vidyalaya, Alegaon, Taluka
Sangola, Dist: Solhapur.

.... Petitioners

- Versus -

1. The Education Officer (Secondary),
Zilla Parishad, Solapur.

2. The State of Maharashtra
through its Principal Secretary,
School and Education Department,
Mantralaya, Mumbai-400 032.

3. Samajik Sanskrutik Congress
Maharashtra having its Branch
Office at Alegaon, Tal. Sangola,
Dist. Solapur through its
President.

4. The Headmaster,
Shri Ashokrao Desai Krishividyalaya,
Alegaon, Tal. Sangola, Dist. Solhapur.

.... Respondents

Mr. Shikur G. Kudle for the Petitioners.
Mr. S.B. Kalel, Assistant Government Pleader,
for Respondent Nos.1 & 2.
Mr. Rajeshwar G. Panchal with Mr. A.R. Kori &
Padmaja S. Suryawanshi for Respondent No.3.
Mr. Prabhakar M. Jadhav for Respondent No.4.

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

DATE : FEBRUARY 04, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents waive service. By consent, Rule is made returnable forthwith and the petition is taken up for hearing and final disposal. Heard.

2. By this writ petition under Article 226 of the Constitution of India, the petitioners seek a declaration that the order dated 27-9-2016 is bad in law and *void ab initio*. That order cannot apply to the petitioners nor can the petitioners' services be done away with by relying on this order.

3. The short facts necessary to appreciate the

arguments of Mr. Kudle are that, petitioner No.1 before this Court, at the time when the petition was filed, was aged 25 years. The petitioners say that the Management submitted an application on 25-7-2014. The Management in this case (respondent No.3) is known as Samajik Sanskrutik Congress, Maharashtra and it is managing and administering Shri Ashokrao Desai Krishividyalaya at Village Alegaon, Taluka Sangola, District Solapur.

4. The petitioners say that permission was sought to insert an advertisement so as to recruit a teacher/Shikshan Sevak. A copy of this letter is at Exhibit-B to the petition. It is claimed that respondent No.1/Education Officer (Secondary), Zilla Parishad, Solapur, did not respond to this written application. Once there was no response, but in order not to cause loss to the academic career of students, the Management inserted an advertisement, copy of which is at Exhibit-C. In para 5 of the writ petition, the petitioners say that there was an interview held in pursuance of this advertisement dated 29-7-2014 and petitioner No.1 appeared in that interview. He

came to be selected after having been found eligible to be appointed as Shikshan Sevak. He was appointed for a period of three years commencing from 4-8-2014 to 3-8-2017 by an appointment order, copy of which is at Exhibit-D. After receipt of this appointment order, petitioner No.1 gave an undertaking in the prescribed form. Thereafter, he gave a resumption/joining report, copy of which is at Exhibit-F.

5. Then it is stated in para 8 that on 31-5-2015 the Headmistress of the school, who was teaching Marathi subject, retired on attaining the age of superannuation. There was heavy workload on the B.Sc., B.Ed. teachers and to avoid academic loss of the semi-English medium students, it was decided to appoint one teacher who qualifies as B.Sc., B.Ed. as a Shikshan Sevak. For making such an appointment, permission was sought by the Management by making a written application on 26-5-2015. A copy of this letter/written application is annexed as Exhibit-G. Once again there was no response and, therefore, an advertisement came to be inserted on 29-5-2015, copy of which is at Exhibit-H. After having applied for the post and interviewed

by the Selection Committee, petitioner No.2 came to be appointed as Shikshan Sevak with effect from 15-6-2015 for a period of three years ending on 14-6-2018.

6. A copy of this appointment order is at Exhibit-I to this petition.

7. She also gave an undertaking in the prescribed form and submitted a joining report, copies of which are at Exhibits-J and 'K'.

8. Then, reliance is placed upon a Government Resolution based on which the staff pattern or staff strength has to be determined. It is stated that the Government Resolution laid down guidelines for fixing the strength of the teachers and that is commensurate with the strength of the students. According to the petitioners, once there was sufficient strength, then, the vacant posts that were filled-in by appointing the petitioners are in consonance with the Government policy and that is how both the petitioners claim that they have been validly appointed, can continue and post their confirmation.

9. However, the petitioners were informed about an order, copy of which is at Exhibit-A and which order is issued by the first respondent. That order is addressed to the President/Secretary/Principal/Headmaster of this Vidyalaya. Pertinently, it makes a reference to several communications and says that this institution did not place the information with regard to the surplus teachers and vacant posts on the portal of the Education Department, though called upon to do so from time to time. As a result thereof, about 100 surplus teachers in Solapur District, awaiting absorption, could not be absorbed. The Management was thus faulted for having obstructed the Education Department in implementing this beneficial and benevolent policy and therefore, by this communication, was called upon to show cause as to why all the vacant posts in this institution should not be declared as lapsed.

10. It is aggrieved by this communication that the present petition has been filed.

11. Mr. Kudle, appearing on behalf of the petitioners,

would submit that these petitioners are open category candidates. Their appointments are legal and valid. That are made in the Academic Year 2014-2015. There was never any information provided with regard to surplus teachers in the District and what is now relied upon by the State Government, and particularly at page 48 of the paper-book, cannot be said to be the basis for the impugned order. The names of the surplus teachers have been indicated with reference to the Academic Year 2017-2018. Mr. Kudle, therefore, submits that relying on this latest information the impugned order could not have been issued. That is not based on any official records. That is based on the fact that there were certain internal differences and which led to the appointment of an Administrator. However, the appointment of the Administrator could not take effect. If the appointment of the Administrator is a later act and the petitioners are not responsible for the alleged act of omission and commission on the part of the Management, then, their appointments cannot be disturbed. The petitioners have been already selected and from prior academic year. They have now

completed the three years' of probationary service as Shikshan Sevak and are deemed to have been confirmed as Assistant Teachers. By relying upon certain acts of the Management, which are allegedly in violation of the policies, the appointments of the petitioners cannot be disturbed.

12. On the other hand, the learned AGP relies upon the affidavit in-reply which is filed by the Education Officer. The Education Officer says that the appointments of the petitioners are as a result of nepotism. The petitioner No.1 is the son of Balwantrao Babar, who is the President of respondent No.3. His entry in the school is by a back-door method. The Management's office bearers indulged in harassing the employees of the school by not completing their Service Books and withheld the increment of the teachers for the Academic Years 2003-2004, 2011-2012, 2012-2013 and 2013-2014. The Management did not constitute the school committee. There is a dispute between the Management and the teachers. No regular Headmaster is appointed in the school and the Management is not complying with the orders of this Court. There are many deficiencies in the

working of the school and there were complaints from the villagers and parents against the Management and that is how the Administrator came and took charge in pursuance of order dated 3-1-2018. The next ground is that the appointments of the petitioners were made respectively on 4-8-2014 and 15-6-2015, after there was a ban on recruitment in force by the Government Resolution dated 2-5-2012. Hence, no proposal for their appointments could have been approved. The other reason is that there were surplus teachers in Solapur District in D.Ed. scale post in 2014-2015 and without absorption of these surplus teachers against the existing vacancies neither of the petitioners could have been appointed. Finally, it is argued that there is a backlog of one Scheduled Caste, one Scheduled Tribe and one Vimukta Jati candidates. These candidates having not been appointed, there was a backlog of reservation.

13. The other reason assigned in this affidavit is that petitioner No.1 holds the qualification of HSC-ATD and not HSC, D.Ed., and he could not have been appointed as an Assistant Teacher in the D.Ed. scale post. There is a reference made to the

Government Resolution of 28-8-2015.

14. As far as petitioner No.2 is concerned, similar deficiencies are noted by the Education Officer, according to the AGP. Hence, Mr. Kalel submits that the challenge to the order dated 27-9-2016 must fail.

15. Mr. Kudle relies upon the affidavit in rejoinder and submits that the petitioners' allegations in the writ petition have never been expressly denied and not even in the belated affidavit filed in this petition on 25-1-2019. Additionally, Mr. Kudle relies upon an order in Civil Writ Petition No.1103 of 2018 {*Balwantrao Mahadev Babar v. The Director of Education (Secondary & Higher Secondary), M.S., Pune & others*} and a civil application therein being Civil Application No.683 of 2018. This order of 23-4-2018, copy of which is at Exhibit-A, page 83 of the paper-book, according to Mr. Kudle, does not allow the Administrator to take charge nor allows disturbance of the petitioners' appointments. For these reasons, Mr. Kudle would submit that this writ petition deserves to be allowed.

16. Mr. Jadhav appeared for respondent No.4/Headmaster and said that the Headmaster supports the stand of the Education Officer and there has been an illegality in the appointment of the petitioners, as highlighted by him.

17. With the assistance of all Advocates, we have perused the writ petition and all the annexures thereto. We have also perused the affidavit in-reply and the rejoinder.

18. The Education Officer/respondent No.1, in his belated affidavit, cites as many as five reasons to support the impugned communication. We have summarised the reasons while taking note of Mr. Kalel's arguments. Pertinently, none of these reasons find place in the impugned communication. That is a cryptic one. That does not make any reference to the settled procedure for making appointments, the qualifications required for the post, the roster or the backlog and it also does not refer to all the lapses and deficiencies on the part of the Management. Most importantly, it does not make any reference to a Government Resolution banning recruitment. Now, an attempt

is made to support the impugned communication and which we find to be not justified at all.

19. The serious apprehension of the petitioners is that, in terms of the impugned communication the Management would be compelled to do away with their services and terminate them. If the petitioners have been working from 2014-2015 and have completed the tenure of three years as Shikshan Sevak, then, the argument is that there is a deemed confirmation. Once the appointments are confirmed but as Assistant Teachers, then, after the lapse of three years, now the process cannot be reopened nor can the appointments be faulted in the manner done.

20. Presently, we keep aside the controversy with regard to the appointment of the Administrator and whether he had indeed taken charge or whether there was any protection granted in the other writ petition, relied upon by Mr. Kudle, preventing the Administrator from taking charge. Assuming that there were lapses on the part of the Management and those

were serious in nature, for such wrongs committed by the Management, whether the Education Department could have stepped in and issued the impugned communication which has the effect of jeopardising the petitioners' appointments, is the moot question before us. If that is how the authorities have proceeded, then the minimal that is expected from them is that they comply with the principles of natural justice. They are neither complied with nor there is adherence to the Rule of law. The expectation is that every action of the Government or Government agencies should be fair, just, equitable, non-arbitrary and non-discriminatory. The Government is expected to act reasonably and in a *bona fide* manner. The Education Department and their officials are not expected either to side with the teachers or with the Management or be unduly harsh on anybody. If they think that the appointments are not made in accordance with law, then at the threshold they must warn the Management that it should either do away with the services of such persons or the Government and the Education Department will take drastic action, including not granting approval to the

appointments, not releasing their salaries and taking action against the institution/Management for not abiding by the rules and regulations and the procedure. If the appointments could not have been made for there were already surplus teachers in the District who were awaiting absorption or there was a backlog of reserved category candidates and therefore open category candidates like the petitioners cannot be appointed, are matters which are extremely serious. It may be relevant and germane but such matters have to be determined by taking a decision and which decision must reflect application of mind. All the relevant and germane factors should be present to the mind of the Education Department. It must pass a detailed order. Before that is passed and records adverse to the parties like the petitioners are relied upon, then, the least that is expected is that such adverse material is disclosed to both the teachers or the affected parties, including the Management and thereafter each one of them is allowed to make his/their submissions. This has to be done at a personal hearing after which the official must pass the requisite reasoned order. Finally, that should be

communicated and if parties like the petitioners are still aggrieved, they can then adopt appropriate proceedings.

21. Today, however, we find a strange thing and that is when this writ petition was filed, it was entertained. The following ad-interim order was made by a Bench of this Court and in the presence of the learned AGP who appeared for both the State and respondent No.1. This order of 27-10-2016 reads as under:-

“Not on board. Taken on production board in view of urgency.

Heard on the question of admission.

Issue notice to respondents. Learned AGP waives service of notice on behalf of respondent nos.1 and 2. Steps be taken for service of notice on respondent nos.3 and 4 within three weeks.

Till next date, there shall be interim order in terms of prayer clause (d). List as per CMIS date.”

22. This clearly means that the impugned order has not taken effect. There is no record that pursuant to the impugned order, the services of the petitioners were already terminated or otherwise done away with. Since there was an interim

protection, it is evident that the petitioners are still in service. We do not know who is paying their salaries and emoluments, but that is a matter which should not be presently discussed by us. In our view, that is an additional reason for setting aside the impugned communication and directing not the Education Officer but the Director of Education himself to step in. This is because the Education Officer has come on the scene and filed the affidavit in-reply on 25-1-2019 and which is two years and more after the date of the impugned order. In the circumstances, we dispose of this writ petition with the following directions:-

- (a) The impugned order/communication, copy of which is at Exhibit-A, dated 27-9-2016, is quashed and set aside.
- (b) The petitioners be allowed to report for duties and continue till the fresh exercise is carried out by the Director of Education, Maharashtra State, Pune, in terms of the above directions.
- (c) The Director shall hear the petitioners and all affected parties, including the Management and pass a reasoned

order within a period of three months from the date of appearance of the parties.

- (d) While passing fresh order, the Director should not be influenced by the affidavit filed on behalf of respondent Nos.1 and 2 in this writ petition and particularly the contents of the affidavit of the Education Officer (Secondary), Zilla Parishad, Solapur.
- (e) The Director must allow all contentions to be raised and after noting them he must pass the fresh order in accordance with law.
- (f) In the event the fresh order declares that the petitioners' appointments are not valid and from inception, then such an order not to take effect for a period of four weeks from the date it is communicated to the petitioners.
- (g) We clarify that we have not expressed any opinion on the rival contentions.
- (h) In the event the petitioners are reporting for duties and

working, then their salaries and other emoluments should be protected till any adverse order of the higher authority, in terms of our directions, takes effect.

- (i) The parties to appear before the Director on 12-2-2019, at 10:30 a.m..

23. Rule is made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)