

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12893 OF 2017

Bharatsingh Nagnathsingh Ghour V/s. State of Maharashtra, Through its Secretary, Education Department, Mantralaya, Mumbai & Ors.	 Petitioner Respondents
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Mr. Samir Kumbhakoni for the Petitioner.

Mrs. Rupali Shinde, A.G.P., for Respondent No.5-State.

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

DATE : 5TH MARCH, 2019.

P.C. :

1. Rule. Learned A.G.P. for the Respondent-State waives service.
2. Rule is made returnable forthwith, by consent.
3. The Petitioner before us is appointed as a 'Peon' in Ekatma Samaj Seva Sudharana Mandal, Salgar Wadi, Solapur (the erstwhile Management) and now the Magas Samaj Seva Mandal, Solapur, which runs the Bal Vikas Mandir, Salgar Wadi, Solapur. The Petitioner was appointed on 1st August 1997.
4. The Petitioner was seeking approval to the appointment and, accordingly, he relies upon a communication of 5th November 2004 addressed to the Bal Vikas Mandir, Salgar Wadi, Solapur. The

Management and Principal of the Bal Vikas Mandir, Salgar Wadi, Solapur were continuously being requested and thereafter they sent all the papers to the Education Officer (Primary), Zilla Parishad, Solapur. Equally, there was one letter of 17th April 2006, which has been addressed to the Divisional Director of Education by the Director of Education, Maharashtra State. The Petitioner was working as a 'Peon', but that particular post was not referred in the list forwarded to the Education Department. It is claimed that, now this Management is Magas Samaj Seva Mandal, Nehru Nagar, Solapur. They took over all the assets and liabilities of the erstwhile Management, including absorbing the employees. The Petitioner says that, regular follow-up has been made even by the new Management, but there was no response. Finding that there was no response and the inaction of the Education Department is affecting the Petitioner's career as also the service conditions, a Writ Petition was brought in this Court being Writ Petition No.7250 of 2012.

5. On 28th November 2013, an order was passed, where-under this 6th Respondent-Education Officer to that Writ Petition was directed to grant approval to the Management's proposal of 5th November 2004. Accordingly, the approval was granted on 4th December 2013, but it was cancelled on that very day. Hence, this Court has passed a fresh order on 2nd December 2016. Pursuant to that order, the impugned order has been passed.

6. On this Petition, after hearing both sides, we made the following order :-

“(1) The Petitioner is appointed as a ‘Peon’. The Petitioner’s appointment has not been approved essentially on the ground that the Petitioner could not have been appointed even as a ‘Peon’ because the student strength had

decreased. Secondly, the post was not sanctioned. The Management has committed this illegality according to the Deputy Director of Education (Primary) and that is why no approval can be granted to the Petitioner's appointment.

(2) It is the Management, which will have to take the responsibility of paying him the salary. Having put in nearly twenty years of service and the Petitioner being a Peon, we expected a reasonable approach from the authorities. Even with reduced staff strength, surely the Management wants a Peon to be appointed and with every restriction or condition in place, we do not see how the superior officer has no scope to relax the rigour of the same. If not any other, at least this is a fit case to consider relaxation to the same.

(3) In these circumstances and with the changed policies, let the Deputy Director apply his mind and inform us by the next date whether the Petitioner's appointment can be approved."

7. After this order was passed, we expected the Respondents and particularly Respondent Nos.1, 4 and 5 to take a sympathetic view, so that the service rendered by the Petitioner for past 22 years is not wiped out.

8. We are surprised that, with the same rigidity and inflexibility, the Education Department has been informing this Court that there is no post of 'Peon' in the School and, therefore, the Writ Petitioner's request and equally that of the Management cannot be sanctioned.

9. The Petitioner, pertinently, is working from 1st August 1997. The

Authority ought to have considered this position.

10. What we find is that the impugned order proceeds on the footing that it is only the new Management, which has employed the Petitioner. The impugned order is passed by not taking into consideration the earlier position and the services rendered by the Petitioner with the erstwhile Management, in fact, in the impugned order, the Authority proceeds to state that, the Bal Vidya Mandir Primary School, Salgar Wadi, Solapur was transferred on 19th May 2006. It was handed over to Magas Samaj Seva Mandal, Nehru Nagar, Vijaur Road, Solapur. After the Primary School was handed over to this Management, it has changed its name to Sau. Ujwalatai Sushilkumar Shinde Prathamik Vidya Mandir, Solapur. Pertinently, the very next sentence is that, this School is an Aided School from 1994. The order of transfer of the school to the new Management is dated 12th January 2005. When the School was handed over, the sanctioned Classes / Divisions were from Standard 'I' to Standard 'VII'. It was a running school.

11. Then reliance is placed upon the 'Government Resolution' of 12th July 2004, which says that, in 336 Schools, 333 posts of Junior Clerks and 336 posts of Peons have been sanctioned by the Government. In so far as Solapur District is concerned, a proposal was forwarded to sanction the posts of non-teaching staff. In the proposal, there was a reference to a 'List' and which list was annexed thereto. At Serial No.31 of this 'List', the name of the Bal Vikas Mandir, Salgar Wadi, Solapur has been mentioned. There was indeed a non teaching staff employed by this School, but, unfortunately, the column pertaining to this 'Non-Teaching Staff' was left blank. However, from July, 2004, the posts in relation to this school were sanctioned. Since the column and very pertinent to the Petitioner was left blank, he was following-up the matter and seeking individual approval to his appointment. Once the transfer was effected, it

was found that in the year 2005-06, the students' strength was 502. In the year 2005-06, as the impugned order recites, it could not have been 445. The earlier sentence in paragraph No.1 of the impugned order contradicts the next. The sole basis on which the appointment was not approved is, because the posts of all Non-Teaching Staff were not sanctioned.

12. Thereafter, Standards V to VII of this School were added to new High School, Salgar Wadi, which is a Secondary School under the same Management, with effect from June, 2008. From June, 2008, even the classes for Standards 'I' to 'IV' are continuing and there are 218 students. It is during the course of hearing before Shri. Ghadge, the Education Officer (Primary), Zilla Parishad, Solapur, that a doubt was raised with regard to the Petitioner's appointment. It was stated that, from 28th October 2003 to 9th November 2004, there was an 'Administrator' appointed on the School. That 'Administrator' was this very Education Officer Shri. Ghadge. He, therefore, formed his own opinion and observed that, such of the employees, whose individual appointments were not approved, even the Management is not recognized, the employees in such schools were not allowed to report for duties. Hence, during this period, the Petitioner was not in service. However, the post was sanctioned in July, 2004, but in the Academic Year 2005-06, the students' strength was reduced. In the year 2006-07, the students' strength was increased and then the post was again sanctioned. However, the post of the Petitioner and particularly his appointment has not been referred and that is why the 'Administrator'-Shri. Ghadge, who was present before the Deputy Director of Education, gave this impression to the Deputy Director of Education. If Mr. Ghadge was the Education Officer at the relevant time and he gave this information, then, he ought to have fairly stated that, when the School was with the erstwhile Management, neither the appointment of the

Petitioner with effect from 1st August 1997 was ever questioned, nor any capital was made of the non-inclusion of the Petitioner's name in the 'List'. That a School having student strength of more than 500 or more is entitled to appoint one 'Peon', is also an undisputed fact. That for certain duration and period, this School did have more than 500 students, is further undisputed fact. It is in these circumstances, that the Deputy Director of Education could have taken a view consistent with the factual materials placed before him. However, he has merely reiterated his earlier stand that the post of 'Peon' was never sanctioned to this School and, therefore, the Petitioner's appointment cannot be approved.

13. The least that was expected from the Authorities was, granting the approval to the Petitioner's appointment at-least from that Academic Year, when the students' strength exceeded 500. That it went down later-on, does not mean a sanctioned post vanishes or lapses automatically. Once this is the position, then, we do not think that we should go on sending the matter back to the Authorities.

14. Even in the affidavit-in-reply filed to this Writ Petition, the above facts and circumstances have not been disputed. It is in these circumstances, that we are not in agreement with the submission of learned A.G.P. that we must see the staff strength and if the post of Non-Teaching Staff (Clerk and Peon) is not sanctioned to this school, then, the Petitioner's appointment cannot be approved.

15. In paragraph No.6 of the affidavit, the Government has contradicted itself by saying in the first part that, there is no sanctioned post of 'Peon' in the School, where the Petitioner was working and is employed. The very next sentence is that, in the impugned order, there is a reference to a 'Corrigendum' promulgated by the State of Maharashtra dated 11th October 2011, in pursuance of the RTE Act,

2009, which has abolished the post of Non-Teaching Staff (Clerk and Peon) in the Primary Schools within the State of Maharashtra.

16. We are at a loss to understand as to how this can affect an appointment already made. The Petitioner has been appointed as a 'Peon' and to now say that his appointment, though effective from 1st August 1997, is made without obtaining the permission of the Government, therefore, contradicts what is set out in paragraph No.6 of the affidavit dated 4th October 2018. This assertion in paragraph No.7 goes further to say that, the appointment of the Petitioner is entirely the burden of the Management and it will be responsible and liable for the said appointment and the liabilities attached to it. Then it is stated that, the 'Staffing Pattern' for the Academic Year 2003-04 makes no reference to a sanctioned post of Clerk and Peon and that is why the Petitioner's name was not included.

17. However, our question and which remains unanswered is that, in the impugned order itself, the Deputy Director of Education says that, in the Academic Year 2005-06, the students' strength was 502 and prior thereto, he makes reference to the Government Resolution of 12th July 2004, sanctioning appointments of 333 Junior Clerks and 336 Peons in 336 Schools, if once these posts have been sanctioned and the proposal from Solapur District has also been received, then, merely because there is an omission on the part of the Management, does not mean that the Petitioner was not appointed at all. Thus, there was no question of doubt and questioning the Petitioner's appointment or the procedure adopted in relation thereto for the simple reason that, this appointment is effective from 1st August 1997 and the impugned order is passed in January, 2017. If that was the position, then, there is no need to rely upon the Government Resolution of 1st April 2011 or a Corrigendum thereto. If there are total 14 Primary Schools within the Solapur District,

in which the name of the Respondent-School was not included, does not mean that the Petitioner is at fault, for the Petitioner is indeed working under the same Management-Respondent No.3 and at the same school.

18. We have, therefore, no hesitation in holding that, none of these subsequent events and documents will, in fact, impact the appointment of the Petitioner.

19. More so, because in the affidavit-in-rejoinder, the Petitioner has categorically stated that the name of the School is included at Serial No.31 and which means that the post of 'Peon' was sanctioned in the year 2004 itself.

20. As a result of the above discussion, we are of the firm opinion that, even if the Petitioner was working under the Management from the year 1997 till 2004, effective from the Academic Year 2004-05, his appointment can be approved. All the more, because the students' strength has exceeded 500 in that year and that it subsequently went down, is thus of no avail and cannot assist Respondent Nos.1, 4 and 5 to frustrate and defeat the appointment of the Petitioner already made. The Petitioner was appointed as a 'Peon' and he cannot be harassed and exploited in this manner.

21. As a result of the above discussion, we quash and set aside the impugned order. We direct that the Petitioner's appointment shall stand approved with effect from 1st June 2004 / Academic Year 2004-05. Though the Petitioner may not be entitled to the financial benefits in the form of difference in Pay-Scales from 1st August 1997, we direct that, his services rendered from 1st August 1997 till 1st June 2004 shall be reckoned for all other purposes, namely, continuity in service, seniority, promotional benefits and retiral benefits including pension etc. The

Respondents shall issue such an approval order as expeditiously as possible and in any event within a period of four weeks from today.

22. The Writ Petition is allowed. Rule is made absolute in the above terms.

[M.S.KARNIK, J.]

[S.C. DHARMADHIKARI, J.]