

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1071 OF 2018

Shri Mane Kuldip Damodar and anr. .. Petitioners
Vs.
The State of Maharashtra and anr. .. Respondents

Mr.N.V.Bandiwadekar a/w Mr.Ashutosh B. Patil i/b Ms.Ashwini
N. Bandiwadekar, for the Petitioners.
Ms.M.S.Bane, AGP for Respondents No.1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 26th MARCH, 2019

P.C. :

. Rule. The respondents waive service. By consent,
Rule made returnable forthwith and heard finally.

2. Invoking the jurisdiction of this Court under Article
226 of the Constitution of India, the petitioners are challenging
the order dated 26/09/2017 passed by the respondent No.2 –
Education Officer (Secondary), Zilla Parishad, District – Raigad
refusing to grant approval to the appointment of the petitioner

No.1 as a Junior Clerk in the School of petitioner No.2. Petitioner No.1 was appointed by an order dated 27/06/2008 as a Junior Clerk. Though a proposal was submitted by the petitioner No.2 for approval, the said proposal was not approved due to some deficiencies. The proposal was re-submitted from time to time. By the impugned order dated 26/09/2017 which is at page 30 of the paper-book, the respondent No.2 refused to grant approval to the appointment of the petitioner No.1 on the ground that the same is not in accordance with the G.R. dated 23/06/2017, G.R. dated 25/05/2017, G.R. dated 30/06/2017.

3. Respondent No.2 has filed an affidavit-in-reply. In the affidavit-in-reply, various reasons have been given justifying the decision of the respondent No.2 in rejecting the approval to the appointment of the petitioner No.1.

4. Learned Counsel for the petitioners would submit that the petitioner No.1 was appointed after issuance of an advertisement on vacant sanctioned post. He would submit that

though the proposal was initially submitted in the year 2009, after removing deficiencies, fresh proposal came to be re-submitted. The impugned order is passed on the basis of the G.R of 2017 which could not have any application while considering the case of the petitioner No.1 as appointment of the petitioner No.1 was of the year 2008. Learned Counsel for the petitioners would further submit that the reasons given in the affidavit-in-reply do not form part of the impugned order. The impugned order is passed on some different grounds. He would submit that the impugned order is unsustainable.

5. On the other hand, learned AGP would support the impugned order. Inviting my attention to the affidavit-in-reply and the impugned order, she submitted that neither roaster was followed while appointing the petitioner No.1 nor any permission was taken from Education Officer for issuing advertisement for the year 2008. She would further submit that the proposal is rightly rejected in view of G.Rs issued from time to time. The last of such G.R.is issued in the year 2017. For all

these reasons, she justified the impugned order.

6. Heard learned Counsel for the parties. On going through the impugned order, I find that the Education Officer, while passing the impugned order, was of the view that the proposal for approval is not accordance with the GRs referred in the impugned order. On going through the affidavit-in-reply, I find the reasons given by the Education Officer justifying the order does not figure in the impugned order. Moreover, it would always be open for the petitioner No.1 to contend that as his appointment is of the year 2008, he would not be governed by the GRs issued in the year 2017. An opportunity therefore will have to be given to the petitioner No.1 to make out his case before the Education Officer.

7. In this view of the matter, the impugned order dated 26/09/2017 is quashed and set aside.

8. The Education Officer to consider the proposal for

approval afresh and in accordance with law after hearing petitioners No.1 & 2 in view of the peculiar facts of this case.

9. The Education Officer to pass a fresh order within a period of 3 months from today.

10. Rule is made absolute and disposed of in the above terms.

(M.S.KARNIK, J.)