

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 735 OF 2018

Shreekrishna Laxman Hipparkar and Anr.	}	Petitioner
versus		
The Education Officer (Secondary), Zilla Parishad, Sangli and Ors.	}	Respondents

Mr.S.G.Kudle for the petitioner.

Mr.S.B.Kalel-AGP for State.

Mr.Ramdas A. Shelke for respondent
nos.3 and 4.

Mr.Mahesh Jagannath Chothe-Education
Officer, Zilla Parishad, Sangli.

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

DATE :- FEBRUARY 12, 2019

ORAL JUDGMENT :- (Per S.C.Dharmadhikari, J.)

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. On this writ petition, we had passed a clear order and which reflected the understanding of the State itself. The Deputy Education Officer (Secondary), Zilla Parishad, Sangli was present in the court and he instructed Mr.Kalel-AGP, to make a statement that now the Education Officer will pass the orders of approval

and those will be passed within two weeks. When the matter was placed on 11th February, 2019, we were informed that this Education Officer does not intend to approve the services of the petitioner for he thinks that there would be a violation of the Government Resolution dated 25th November, 2005 as also other provisions of law. He, therefore, makes a statement that he would like to pass such orders as are permissible in law.

3. We were really surprised at such a response and therefore, we passed a drastic order summoning him to attend the court with records. On his attendance today, he maintains that firstly there is a difficulty because unless he speaks to the superior officer and obtains his approval, he would not be able to pass an order in terms of the statement made before this court. Secondly, his understanding is that the policies of the Government do not allow the management to appoint four peons for there were only two posts which were sanctioned. In these circumstances, the petitioners and two peons in number exceed this digit 2 and therefore, the approval to the petitioners' appointment would be contrary to the Government Resolution itself.

4. We do not think that this understanding of the Education Officer gets any support from the material placed on record. The factual material and peculiar to these petitioners is that these

petitioners have been appointed by the management, namely, respondent no. 3 in Shri Sonar Shidha Vidyalaya, Wayafal, Tal.Jat, District Sangli. This is a school managed and administered by respondent no. 3-management. It is clearly stated in this writ petition by the petitioners that they were appointed way back and during the academic year 2008-09. In paras 3 and 4 of this writ petition, the petitioners have said that they have been given appointment orders dated 24th November, 2008 effective from 1st December, 2008. Para 4 of the writ petition opens with two factual statements and they are that during this academic year 2008-09, there were four sanctioned posts of peons in the Secondary school in question and secondly, the said school was 100% aided. Hence, the petitioners were entitled for regular pay-scales.

5. It is stated that the position is affirmed on 27th July, 2012 when for academic year 2012-13, the staffing pattern was sanctioned and approved by the Education Officer. It is very clearly stated in this that the Education Department has approved the non-teaching staff strength in the academic year 2011-12 as it is for academic year 2012-13. However, as far as these approved and sanctioned posts are concerned, any vacancy therein ought to be filled in by bearing in mind the Government

Resolution dated 25th November, 2005. If that is how the staffing pattern stands revised, then, the Government Resolution would bind is the understanding of the Education Officer and quite to the contrary of the petitioners. However, the petitioners state and maintain throughout that they have been appointed against sanctioned staff strength and for the academic year 2008-09 and nothing was done for further academic years or succeeding academic sessions which would affect their appointments. The petitioners have stated that this is how the management forwarded the proposals and while doing so, they categorically stated that the petitioners are working.

6. Further, in paras 6 and 7 it is stated that the vacancies are carried forward and the understanding of the petitioners and the management was never disputed or questioned by respondent no.1. Once the approval was not forthcoming, the petitioners were constrained to file Writ Petition No. 1623 of 2014. That was resisted by the State by filing an affidavit in reply and annexing therewith a copy of the Government Resolution dated 25th November, 2005. The petitioners filed a rejoinder affidavit and controverted the assertions in the affidavit in reply and reiterated their stand as noted above.

7. This writ petition (WP/1623/2014) was disposed of on 12th October, 2015 directing the first respondent to take a decision within a period of eight weeks from the date of this court's order dated 12th October, 2015. This order was not complied with and therefore, a contempt petition, being Contempt Petition No. 40 of 2016, was moved and on 23rd November, 2017, an order was passed on this contempt petition directing respondent nos. 1 and 2 to this petition to remain present in this court on the next date of hearing.

8. Despite this contempt petition and the order therein, it appears that the approval was not granted, but, then, during the pendency of the contempt petition, a verification of the Roster was called for by addressing a letter dated 29th February, 2016.

9. The first respondent then passed an order, copy of which is at Exhibit 'L'. It is that order which the petitioners are aggrieved by and have filed this second writ petition.

10. Exhibit 'L' to this writ petition, to the extent relevant, says that the proposal seeking approval to the petitioners' appointment cannot be granted as there was a Roster sanctioned and approved and based on the verification of the Roster, the request of the petitioner can be considered. The verification of

the Roster has yet not been done by the Commissioner, Backward Class Cell and therefore, the management's request to approve the petitioners' appointment cannot be presently considered.

11. We are further surprised to note that when this is a clear case of inaction and utter negligence so also defiance of this court's order, how the Education Officer is allowed to justify it again and again. The management, in this case, filed an affidavit in reply. In that, they say that the petitioners were duly qualified for the post of peon and therefore, petitioner no. 1 was appointed in the secondary school as peon on 24th November, 2008 on a clear and vacant post. Same is the case of petitioner no. 2. Once their appointments were made against a clear and vacant post and on probation of two years, on satisfactory completion of their two years' service, they were confirmed. It is categorically stated that their services were reckoned from 1st December, 2008 as probationers and from 1st December, 2010, they were allowed to continue once their work was found to be satisfactory.

12. It is stated that the school was not receiving financial grant so as to pay the salaries and from the year 2008, this grant became available and to the extent of 100%. The affidavit says that at the initial stage, two posts for the non-teaching staff were available. Out of the said two posts, one post was for junior clerk

and another was for the post of peon. One Tukaram Yadav was working as a peon at that time as he was appointed on 14th June, 1999 from the open category and his service was approved by respondent no. 1. In the academic year 1999-2000, the school submitted proposal for staff approval to respondent no. 1 and the same was approved for the academic year 1999-2000. In the academic year 2001-02, the strength of the students increased and two posts of peon and one post of junior clerk became available in the school. The staff approval for the academic year 2001-02 was sought and that was granted by Annexure 'C' to the affidavit in reply of the management. That Annexure 'C' is carrying endorsement of the first respondent. Thus, this is an approved staff strength. Then, from 2002-03, there were five posts of non-teaching staff available in the school. Three posts of peon were vacant in the school. That is how the petitioners were appointed on 24th November, 2008. One Mr.Nilesh Mane was appointed on 1st June, 2009. Although Mr.Nilesh Mane was appointed subsequent to the petitioners, his service came to be approved as it is said that he belongs to Scheduled Caste category. Then, the staff approval from 2002-03 up to the year 2017-18 has been duly approved by the first respondent and on each occasion, four posts of peons came to be sanctioned in the aided section. Then, it is claimed that the first petitioner is from Other

Backward class category. On 12th August, 2010, the proposal of the management came to be forwarded. In para 7 of this affidavit at pages 57 and 58, the management/respondent nos. 3 and 4 state thus:-

“I say that as per the roaster, there are four posts of the peons available in the School. I say that two posts for the reserved category and two posts for open category are available. I say that on one post of open category Shri Tukaram Yadav was appointed and his service was approved by the Respondent No.1. I say that on one post of the reserved category the service of Shri Nilesh Mane was approved by the Respondent No.1. I say that presently two posts of the peon are available and the Petitioners are working on the said posts and their services are remained to be approved by the Respondent No.1. I say that presently one post from open category and one post from reserved category (OBC) are available. Hereto annexed and marked **Annexure-E** is a document showing the sanctioned posts of Non-Teaching Staff.”

13. Then, in para 8, it is once again reiterated that the staff strength was approved without any objection of the first respondent. Once the management's proposal was forwarded and there was total inaction that the earlier round of litigation resulted with the direction in the aforementioned terms.

14. Now, this affidavit, solemnly affirmed on 13th July, 2018, is on record. The Education Officer responds to this affidavit on 24th October, 2018. None of the statements made in the affidavit of the management nor the assertions and factual position set out in the petition is controverted or disputed. Mr.Maruti Tukaram Ligade, the Deputy Education Officer (Secondary), Zilla Parishad, Sangli

filed the affidavit and the contents thereof are very interesting. The inaction throughout is justified by relying on the Government Resolution dated 25th November, 2005 and the subsequent Government Resolution dated 23rd October, 2013. It is claimed that this is on the staffing pattern and then there is a further Government Resolution dated 12th February, 2015, particularly on the point of recruitment/staffing pattern insofar as non-teaching staff in aided schools/partly aided Secondary and Higher Secondary schools. The deponent refers to an order directing maintenance of status quo and not to make any new recruitment till the final decision taken by the committee.

15. The deponent of this affidavit fails to understand that he does not have to deal with a situation of the nature referred by him in the affidavit in reply. The Government Resolutions dated 12th February, 2015 and 23rd October, 2013 are inapplicable. The petitioners have been appointed long time back and much before these Government Resolutions coming into effect. Their appointments are with effect from 1st December, 2008. There was no policy of banning recruitment at that time. There was no policy which requires the authorities to await verification of the Roster even if that Roster is for the academic year 2008-09, in 2016. Yet, the Education Department and the Education Officer

delayed the matter and postponed passing orders approving the petitioners' appointments.

16. When such an affidavit was placed on record and there is an affidavit in rejoinder of the petitioner that on the previous occasion the Deputy Education Officer having understood fully the factual position and the legal position, made a solemn statement that the appointments would be approved. We accepted that statement and expected that the orders would be passed before the next date.

17. At the next hearing, respondent no. 1 goes back on the solemn statement made and recorded in this court's previous order. He is now refusing to pass an order approving the petitioners' appointments.

18. Having noted the factual and legal position and finding that there is total silence with regard thereto in the affidavit of the Government, we have no hesitation in coming to the conclusion that the Government of Maharashtra, through this Department of Education, is not disputing the stand of the petitioners and the management at all. Rather, it has accepted it. Once having approved the appointments which have been made and reference to which has been made in the foregoing paragraphs by us in

great details, then, the appointments for academic year 2008-09 ought to have been approved by now. We are in the year 2019. The petitioners have completed 10 years of service. The petitioners have rendered their services after the management made them permanent on satisfactory completion of the probationary period. The management's proposal seeking approval to the appointments of the petitioners is consistent with the policies. Hence, we cannot uphold the refusal or inaction on the part of respondent no. 1. In the facts and circumstances and when a public duty is to be performed by the Education Officer, which he has failed to perform or discharge, then, this is not a case where we are directing appointments of the petitioners or issuance of an appointment order in favour of them. All that we are directing is that the administrative approval to their appointments should be given so that they are able to obtain the fruits of the policies and pay-scales framed by the Government. The non-teaching staff attached to a secondary school is entitled to pay-scales under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder. These pay-scales can be obtained on the services being approved. Once the administrative exercise of granting approval to the petitioners' appointments is delayed intentionally and deliberately, then, by the inaction on the part of

the Education Department, neither the petitioners should suffer nor the larger interest of the public should be adversely affected. Ultimately, grant-in-aid is made available by utilising public funds. Public funds are not to be wasted nor the public funds should be allowed to be expended after forcing parties like the petitioners to initiate litigation. The Government has itself to blame for it got entangled in litigation. It got entangled entirely on account of its own fault. We have, therefore, no hesitation in granting the prayers in this writ petition. We now no longer expect the Education Officer to pass orders and which were entirely formal in nature. His refusal to pass such order should not result in great prejudice to the petitioners. We do not wish that the State Government expends public funds in litigation of this nature. Hence, the following order:-

- (i) The writ petition is allowed in terms of prayer clauses (b) and (c).
- (ii) Let all arrears in terms of the pay-scales admissible to the petitioners from 1st December, 2008 be released as expeditiously as possible and in any event by 31st May, 2019.
- (iii) This order is passed because there is bound to be a difference in the pay-scales presently admissible to the petitioners and those prescribed by law. It is this differential amount which will have to be released and that be released within the aforementioned period.

(iv) As far as the future is concerned, the petitioners' services having been expressly approved by us, the monthly pay-scales in terms of the rules and as prescribed be made admissible and from month to month.

(v) To enable the management to pay the salaries of the petitioners in terms of the prescription made by the rules, the grant-in-aid should be made available by respondent nos. 1 and 2.

(vi) We are constrained to direct the Director of Education, Government of Maharashtra to initiate such steps, including disciplinary action against the Education Officer (Secondary), Zilla Parishad, Sangli for his failure to abide by the orders of this court. He has defied the orders of the court and dragged the Government into unnecessary litigation. The Government has incurred expenditure on account of his inaction. Hence, this drastic order and direction and we expect the action to be initiated and completed within a period of six months from today.

19. With the aforesaid directions, the writ petition is disposed of. Rule is made absolute in the aforesaid terms. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)