

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11505 OF 2018

Mr. Vishal Yashwant Devkate	]	
Age : Adult, Occ : Service	]	
Residing at Mekhali, Taluka : Baramati,	]	
District Pune	]	 Petitioner.

Versus

1]	The State of Maharashtra	]	
	(Through the Secretary	]	
	School Education and Sports Department,	]	
	Mantralaya, Mumbai – 400 032	]	
		]	
2]	The Deputy Director of Education	]	
	Pune Division, 17 th Dr. Ambedkar Road	]	
	Opp. Lal Temple, Pune – 01	]	
		]	
3]	The Education Officer (Secondary)	]	
	Yashwantrao Chavan Bhavan	]	
	Pune Zilla Parishad, Pune.	]	
		]	
4]	Nisakhar Education Society	]	
	(Through the Chairman/Secretary)	]	
	At Nimsakhar, Taluka Indapur,	]	
	District : Pune	]	
		]	
5]	N. E. S. High School	]	
	(Through the Head Master)	]	
	At Nisakhar, Taluka : Indapur	]	
	District : Pune	]	 Respondents.

Mr. L S Deshmukh for the Petitioner.
Mr. M M Pabale, AGP, for the Respondents/State.

CORAM : S. S. SHINDE,
V. G. BISHT, JJ
Reserved on : 27th February 2020
Pronounced on : 18th March 2020

JUDGMENT :- (PER S S SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2 By this Petition under Article 226 of the Constitution of India, the Petitioner takes an exception to the order dated 11/06/2018 passed by Respondent No.2 – Deputy Director of Education by which order Respondent No.2 has cancelled the approval of Petitioner's appointment to the post of Assistant Teacher.

3 The factual matrix involved in this Petitioner can in brief be stated thus :-

It is the case of the Petitioner that in the year 2008 the Petitioner completed his B.Sc and in the year 2010 he completed B.Ed from Pune University. Therefore, the Petitioner possesses requisite qualification of B.Sc.B.Ed and the conditions as required under the provisions of the Maharashtra Employees of Private School (Condition of Service) Regulation, Act, 1977 have been fulfilled and he became eligible for being appointed to the post of Shikshan Sevak/Assistant Teacher in a Secondary School. It is the case of the Petitioner that on account of retirement of two assistant teachers due to

superannuation, who were working in Respondent No.5 School, two posts of assistant teacher meant for unreserved category of English and Science, fell vacant.

4 It is further the case of the Petitioner that, Respondent No.4 management sought permission of Respondent No.3 Education Officer for issuance of an advertisement but Respondent No.3 did not respond to the same. Thereafter Respondent No.4 after following the procedure issued an advertisement in a local news papers for filling up the posts of assistant teacher for English and Science subjects in Respondent No. 5 School. According to the Petitioner the said posts notified by Respondent No.4 were sanctioned vacant posts. Pursuant to the said advertisement, the Petitioner applied for the posts of assistant teacher of Science Subject (Math and Science). Considering the merits and performance of the Petitioner, he was selected for the post of Shikshan Sevak to teach Mathematics and Science in Secondary Division and Respondent No.4 vide appointment letter dated 13/06/2011 appointed the Petitioner with effect from 15/06/2011. The said appointments to the posts of Shikshan Sevak were made on probation for a period of three years. Accordingly Petitioner joined the service with effect from 15/06/2011. Thereafter Respondent No.4 submitted a proposal to Respondent No.3 for approval of Petitioner's appointment to the post of Shikshan Sevak. However, Respondent No.3 did not act upon the said proposal almost for three years.

Respondent No.4 considering the Petitioner's performance confirmed the Petitioner's services as Assistant Teacher with effect from 15/06/2014. Thereafter Respondent No.5 vide his letter dated 11/07/2014 sent a reminder for approval to the Petitioner's appointment to Respondent No.3. Respondent No.3 vide his letter dated 14/07/2014 granted approval to the Petitioner's appointment to the post of Shikshan Sevak. Respondent No.3, considering the fact that Respondent No.4 had confirmed the Petitioner's service in Respondent No.5 School, by letter dated 25/07/2014 granted approval to the Petitioner's regular salary as assistant teacher.

5 Thereafter Respondent No.3 by letter dated 08/12/2015 called upon the Petitioner as well as Respondent Nos.4 and 5 for hearing as according to the Respondent – Authority, the approvals granted by the then education officer were in violation of rules. It is the case of the Petitioner that Respondent No.3 without having powers and authority of law to review his own orders, cancelled the approval of the Petitioner's appointment as Shikshan Sevak vide order dated 16/12/2015. The Petitioner and similarly situated employees filed Writ Petition being No.12897 of 2015 (Ajinath Dattatraya Malgunde and anr. v/s. The State of Maharashtra and ors.) in this Court. This Court by order dated 30/03/2017 quashed and set aside the said order dated 16/12/2015 passed by Respondent No.3 education officer and matter was remanded back for a decision afresh.

6 Pursuant to remand, Respondent No.3 vide letter dated 13/04/2017 issued a show cause notice to the Petitioner and Respondent No.4 Management. It was stated in the said show cause notice that there were irregularities caused in the proposal for approval and therefore called for explanation from the 4th Respondent and the Petitioner. The Petitioner as well as Respondent No.4 vide letter dated 28/04/2017 submitted their explanation to the said show cause notice. Thereafter Respondent No.2 Deputy Director called upon the Petitioner for hearing on 30/05/2017. The Petitioner and representative of Respondent No.4 were present in the office of Respondent No.2 for hearing. Respondent No.4 submitted their representation to Respondent No.2. It is the case of the Petitioner that Respondent No.2 on the same day, without hearing the Petitioner closed the matter for order. It is further the case of the Petitioner that Respondent No.2 in the month of June 2018 came to be transferred from the post of Deputy Director of Education and, was relieved from the said post on 29/06/2018. However, the office of Respondent No.2 on 14/08/2018 issued impugned order dated 11/06/2018 to the Petitioner cancelling the approval to the appointment of the Petitioner.

7 It is the case of the Petitioner that Respondent No.2 without application of mind and without taking into consideration the provisions of relevant laws and judgments of this Court has relied upon the GR dated

06/02/2012 issued by School Education and Sport Department, State of Maharashtra. According to the Petitioner as the Petitioner was appointed in the year 2011, the said GR dated 02/05/2012 issued by the State Government is not applicable to the case of the Petitioner. It is further the case of the Petitioner that Respondent No.1 issued another Government Resolution and had taken a decision that the post of assistant teacher/shikshan sevak which are filled in prior to May 2012 and also the posts for the subject of English, Science and Mathematics shall be exempted from the ban of GR 02/05/2012. It was further decided that the posts reserved for backward class shall be exempted from the said ban.

8 The Division Bench of this Court while dealing with the similar issue in Writ Petition No.8587 of 2016 (Smt. Munoli Rajashri Karabasappa v/s. State of Maharashtra and ors.) has held that the provisions of the said GR dated 02/05/2012 are not applicable to the three categories i.e. the recruitment process was initiated prior to 2012; the posts of English, Math and Science subjects and the posts of reserved categories. The Petitioner has therefore filed the present Writ Petition for quashing and setting aside the impugned order dated 11/06/2018 passed by Respondent No.2 Deputy Director.

9 The learned counsel for the Petitioner submits that the Petitioner

came to be appointed by Respondent No.4 in Respondent No.5 school after following due process. It is submitted that the Petitioner's services as assistant teacher came to be confirmed by Respondent No.4 and approval to the Petitioner's appointment to the post of shikshan sevak came to be granted by Respondent No.3 education officer, as also granted approval to the regular salary of Petitioner. According to the learned counsel for the Petitioner if the Petitioner's appointment was duly approved by Respondent No.3 education officer then it was not within his powers to have reviewed the said order. It is therefore submitted that there is no illegalities and/or irregularities in the process of appointment of the Petitioner on the post of shikshan sevak. It is also submitted that Respondent No.2 Deputy Director without hearing the Petitioner closed the matter for hearing. Therefore, the impugned order has resulted in violation of principles of natural justice. It is also submitted that as the appointment of the Petitioner was in the year 2011, Respondent No.2 has wrongly relied upon the GR dated 06/02/2012 which is not applicable in the case of the Petitioner. He submits that Respondent No.2 did not consider the provisions of MEPS Act. He lastly submits that the Petition may be allowed.

10 The learned AGP vehemently opposes the Petition. He submits that there was a ban imposed with a view to accommodate the surplus teachers, and therefore, there are irregularities and/or illegalities in the process of appointment of the Petitioner. He submits that if the Petition is allowed, the

State Government would have to pay the salary of the Petitioner. He further submits that the approval order of the Petitioner's appointment was obtained by fraud. He submits that the appointment of the Petitioner is contrary to said GR dated 06/02/2012 and in violation of the relevant provisions of law, and therefore, Respondent No.2 has rightly cancelled the approval of the Petitioner's order. He lastly submits that the Petition may be dismissed.

11 We have given careful consideration to the submissions advanced by the learned counsel for the parties. With their able assistance perused the pleadings in the Petition and annexures thereof.

12 In the present case, the appointment of the Petitioner as Shikshan Sevan was made on 15/06/2011 i.e. prior to 2012. It is also required to be noted that Respondent No.3 earlier on 14/07/2014 granted approval to the Petitioner's appointment as Shikshan Sevak and also granted approval to the regular salary. However, on 16/12/2015 Respondent No.3 cancelled the approval. It is submitted on behalf of the Petitioner that this Court vide order dated 23/03/2017 set aside the said order passed by Respondent No.3, by keeping it open for the authority to take appropriate steps, if it is found that Petitioner has obtained the said order by mis-representation and/or by playing fraud. Thereafter Respondent No.3 on 13/04/2017 issued show cause notice to the Petitioner seeking explanation on certain points. The Petitioner submitted

his reply to the said show cause notice. It is important to note that though the representative of the 4th Respondent – Management and the Petitioner were present in the office of Respondent No.2 for hearing, according to the Petitioner, without hearing them, Respondent No.2 closed the matter for order. If according to the Respondents-Authorities, the appointment of the Petitioner was made without following proper procedure and by misleading or by furnishing fabricated documents then it was necessary for Respondent No.2 to have heard the representative of the 4th Respondent and the Petitioner at the time hearing the matter on the said points.

13 One more aspect which needs to be considered is after Respondent No.2 having been transferred and relieved from the post of Deputy Director on 29/06/2018, the office of Respondent No.2, on 14/08/2018 issued the impugned order which was passed on 11/06/2018. If the impugned order was passed on 11/06/2018 and the then Deputy Director was transferred, then the impugned order should have been issued before relieving the then Deputy Director on 29/06/2018 and not thereafter on 14/08/2018.

14 There is another GR dated 04/09/2013 issued by State Government. According to the learned counsel for the Petitioner in view of the said GR, the subject of English, Science and Mathematics have been exempted from the ban imposed vide GR dated 02/05/2012 and the posts reserved for

backward class have also been exempted from the said ban and, therefore, the action of the Respondents – Authorities refusing to grant approval to the appointment of the Petitioner is unsustainable in law. In support of the aforesaid submission, the learned counsel for the Petitioner sought to rely upon the judgment of the Division Bench of this Court (B R Gavai and Riyaz I Chagla, JJ) dated 10/07/2017 in Smt. Munoli Rajashri Karabasappa (supra). Paragraphs 4 to 7 of the said case are relevant and are reproduced herein under for ready reference :-

4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects of English, Maths and Science are concerned.
5. The Division Bench of this Court in the cases of Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr. 1 has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfill the backlog of backward class candidates.
6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates. the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government

resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates.

15 In that view of the matter, it was necessary on the part of the Respondents - Authorities to give an opportunity of hearing to the Petitioner and the Respondent Management to put forth their case. Having not been done so, and in view of the aforesaid pronouncement, we have no option but to quash and set aside the impugned order dated 11/06/2018 passed by Respondent No.2 cancelling the approval to Petitioner's appointment to the post of Shikshan Sevak and remand the matter back to Respondent No.2 for a de-novo consideration. Respondent No.2 is directed to consider the case of the Petitioner afresh and after giving opportunity of hearing to the Petitioner as well as Respondent No.4 and pass a reasoned order as expeditiously as possible and preferably within a period of three months from today and communicate the said decision to the Petitioner as well as Respondent Nos.4 and 5. The ad-

interim relief granted by this Court vide order dated 08/10/2018 would continue to operate till the decision of Respondent No.2 on remand. Rule is made absolute to the aforesaid extent. The Writ Petition is accordingly disposed of.

[V. G. BISHT, J]

[S. S. SHINDE , J]

Laxmikant
G.
Chandan

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by Laxmikant
G. Chandan
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