

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

108 WRIT PETITION NO.7794 OF 2021

DATTA SHIKSHAN PRASARAK MANDAL
THROUGH ITS SECRETARY AND ANOTHER
VERSUS

THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND ANOTHER

...

Advocate for Petitioners:
Mr. Chandrakant K. Shinde
AGP for Respondents: Mr. P. K. Lakhotiya
...

**CORAM: S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE: 15th NOVEMBER, 2021

PER COURT:

1. The proposal seeking approval to the appointment of Petitioner No. 2 as Junior Clerk is rejected.

2. Mr. Shinde, learned Counsel for the Petitioners submits that Petitioner No. 2 was appointed after following due process. The post had become vacant upon the retirement of one employee. Upon the post becoming vacant, the management applied to the Education Officer seeking permission to fill in the post, no

response was received. Thereafter, advertisement was issued, Petitioner No. 2 was selected. According to the learned Counsel, Government Resolution dated 04.05.2020 would not apply to Petitioner No. 2 as the Petitioner No. 2 is appointed prior to the said Government Resolution. The learned Counsel submits that the post on which Petitioner No. 2 was appointed was admissible and sanctioned post. Even, as per the Government Resolution of March-2019 the post is available. The impugned order is erroneous.

3. Mr. Lakhotiya, the learned A.G.P. submits that on 08.06.2020 the communication was made to Petitioner No. 1 that no fresh appointment shall be made. However, Petitioner No. 1 without waiting for the response from the Education Officer appointed Petitioner No. 2.

4. We asked the learned A.G.P. as to whether any surplus Junior Clerks were available and were forwarded to Petitioner No. 1 / Institution. The learned A.G.P. answers in the negative.

5. The Government Resolutions dated 04.05.2020 would not apply as Petitioner No. 2 was appointed prior to the said Government Resolution. The post on which Petitioner No. 2 is appointed is not only admissible but also a sanctioned post. The same is also permissible as per Government Resolution of 28.01.2019. Upon retirement of the Junior Clerk, Petitioner No. 2 is appointed w.e.f. 21.03.2020. The communication made by the Education Officer to Petitioner No. 1 was after lapse of about 4 months. During the interregnum, the advertisement was issued and Petitioner No. 2 was appointed.

6. The learned A.G.P. submits that as per Clause 4 of the Government Resolution dated 07.03.2019 Petitioner No. 1 could not have appointed Petitioner No. 2.

7. The said clause would apply, if, there is an additional post to be created and not to the one which is already a sanctioned post.

8. In the light of above, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the appointment of Petitioner No. 2 afresh, on it's own merits. It shall not reject it on the ground on which the impugned order is passed. The same shall be decided preferably, within a period of six (06) months.

9. Writ Petition accordingly stands disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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