

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.6582 OF 2016

Navnath S/o Narsing Gore
 Age: 38 years, Occu: Service,
 Assistant Teacher, Kai. Savitribai
 Phule Secondary and Higher Secondary
 School, Satephal, Tal. Kallamb,
 District Osmanabad.

... Petitioner

Versus

1. State of Maharashtra
 Through its Secretary,
 School Education Department,
 Mantralaya, Mumbai.
2. Director of Education,
 Maharashtra State, Pune.
3. Deputy Directory of Education
 Latur Division, Latur.
4. Shri. Sant Goroba Kaka Shikshan
 Prasarak Mandal, Satephal,
 Tal. Kallamb, Dist. Osmanabad,
 Through its Secretary.
5. Headmaster
 Kai. Savitribai Phule Secondary,
 and High Secondary
 School, Satephal, Tal. Kallamb,
 District Osmanabad.

... Respondents

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Mr. S. S. Thombre, Advocate for the Petitioner
 Mrs. M. A. Deshpande, AGP for Respondent Nos.1, 2 & 3
 Mr. Shrikrashna B. Solanke, Advocate for Respondent Nos.4 & 5.

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**CORAM : UJJAL BHUYAN &
 M. G. SEWLIKAR, JJ.**
DATE : 23rd March, 2021

JUDGMENT (Per Ujjal Bhuyan, J.):-

- . Rule. Rule made returnable forthwith.
2. Heard Mr. Thombre, learned counsel for the petitioner; Mrs. M. A. Deshpande, learned AGP for respondent Nos.1, 2 and 3; and Mr. Solanke, learned counsel for respondent Nos.4 & 5.
3. By filing this petition under Article 226 of the Constitution of India petitioner seeks quashing of order dated 20.01.2016 issued by the Deputy Director of Education, Latur Division, Latur i.e. respondent No.3 rejecting the proposal for granting approval to the services of the petitioner as Assistant Teacher in respondent No.5/School.
4. Case of the petitioner is that he has the educational qualification of M.A., B.Ed (Geography and Political Science) and is therefore eligible and qualified to be appointed as an Assistant Teacher in Secondary and Higher Secondary School.
5. Be it stated that respondent No.5/School is managed by respondent No.4.
6. An advertisement was issued by respondent Nos.4 & 5 which was published in the news paper 'Daily Lokmat' on 29.08.2008 for filling-up vacancies in the posts of Assistant Teacher in English, Political Science, Geography,

Shikshanshastra and History on clock hour basis. While one post was reserved for OBC category, two posts were under the open category.

7. Petitioner applied pursuant to the above advertisement for the post of Assistant Teacher in Geography under the OBC category. In this connection the candidates who had applied were interviewed on 31.08.2008. Thereafter petitioner came to be selected under the OBC category for the post of Geography. Following the selection of the petitioner, respondent No.4 and the School Management Committee issued appointment order in favour of the petitioner on 05.09.2008 on clock hour basis. Petitioner joined respondent No.5/School on 09.09.2008.

8. As the service of the petitioner was found to be satisfactory, petitioner was appointed to the said post of Assistant Teacher on full time basis for a period of two years with effect from 17.06.2012. In this connection School Management Committee adopted resolution dated 07.06.2012 whereafter appointment letter was issued to the petitioner on 07.06.2012. On the basis of such appointment, petitioner joined respondent No.5/School on 18.06.2012.

9. School Management Committee adopted a resolution on 20.07.2014 appointing the petitioner to the said post of Assistant Teacher on permanent basis as the service of the petitioner was found to be satisfactory. Consequently, permanent appointment order of the petitioner was issued on 23.07.2014.

10. Upon appointment of the petitioner to the full time post of Assistant Teacher, respondent No.5 had submitted proposal to respondent No.3 seeking approval to the appointment of the petitioner as Assistant Teacher. The proposal was submitted on 31.07.2013 which was followed by reminder.

11. It is stated that there is a dispute between two groups regarding management of respondent Nos.4 and 5. Therefore, respondent No.3 rejected the proposal submitted by respondent No.5 vide the order dated 20.01.2016 by observing that approval cannot be granted till the decision in the dispute for management of respondent Nos.4 and 5 was resolved. This was intimated to the petitioner by respondent No.5 vide letter dated 20.04.2016.

12. Assailing such rejection of the proposal sent for grant of approval, present writ petition has been filed seeking the reliefs as indicated above.

13. Respondent No.3 has filed affidavit. It was filed on 13.10.2016. Stand taken in the affidavit is that respondent No.5 had submitted proposal of the petitioner to respondent No.3 on 31.07.2013 seeking approval. Upon scrutiny of the proposal, respondent No.3 had rejected the same for the following reasons:-

- (i) Full time post was not approved from the date of appointment i.e. from the year 2008.
- (ii) Appointment order was not attached.
- (iii) Joining report was not attached.
- (iv) School Committee decision was not attached.

14. This was informed to respondent No.5 vide letter dated 09.01.2015. However, respondent No.5 vide letter dated 15.03.2015 submitted the documents to respondent No.3 which were pointed out in the letter dated 09.01.2015.

15. In the meanwhile, Shri. S. G. Waghmare, Secretary of Sant. Goroba Kaka Shikshan Prasarak Mandal submitted a complaint to respondent No.3 not to grant approval of Junior College because of dispute in the management vide letters dated 29.03.2014 and 12.2.2015. In this connection similar complaint was filed by an Advocate S. S. Waghmare of Osmanabad stating that there was a dispute regarding management of the Shikshan Prasarak Mandal.

16. Respondent No.3 arranged a hearing on 18.12.2015 wherein it transpired that there was a dispute regarding control of management of respondent Nos.4 and 5 which was pending before the Assistant Charity Commissioner. Accordingly, respondent No.5 was informed vide the impugned letter dated 20.01.2016 keeping the proposal of the petitioner pending.

17. Respondent Nos.4 and 5 have filed a common affidavit-in-reply. Stand taken in the affidavit is that following due selection petitioner came to be appointed as Assistant Teacher on clock hour basis with effect from 05.09.2008 which continued till the academic year 2011-2012. Considering the work load, petitioner was appointed as Assistant Teacher in respondent No.5/School on full

time basis from the year 2012-2013. Petitioner was teaching the subjects of Geography and Political Science. In the seniority list of Assistant Teacher, petitioner is at Sr. No.10. As a matter of fact, since 17.06.2012 petitioner is working as full time Assistant Teacher. Considering the satisfactory service rendered by the petitioner, answering respondent submitted proposal before respondent No.3 on 31.7.2013 for grant of approval to the service of the petitioner in the post of Assistant Teacher forwarding therewith all relevant documents.

18. Respondent No.3 rejected the proposal of the petitioner for grant of approval in the post of Assistant Teacher only on the ground that there was a dispute in the management and therefore till resolution of the dispute, proposal for granting approval to the service of the petitioner could not be considered.

19. It is contended that petitioner was appointed after following the due process of law and therefore respondent No.3 ought to have granted approval to the service of the petitioner.

20. An additional reply affidavit has been filed by respondent No.3. It was filed on 12.02.2019. In this affidavit, it is contended that the initial advertisement dated 25.08.2008 was for a post on permanent non-grant basis that too on clock hour basis. Prior to appointment of petitioner on clock hour basis, no application for permission was ever moved by the management of

respondent No.5/School and as such the initial appointment of the petitioner on clock hour basis was itself not in conformity with law.

21. Even the proposal for grant of approval to the appointment of the petitioner on clock hour basis was submitted for the first time on 31.07.2013.

22. As per sanctioned staffing pattern of respondent No.5/ School for the academic years 2008-2009 and 2009-2010, the post of Assistant Teacher in Geography was on part time basis and for the academic year 2010-2011, the said post was on clock hour basis. For the academic years 2011-2012 and 2012-2013, the said post was on part time basis and it was for the first time for the academic year 2013-2014, the said post of Assistant Teacher in Geography was brought on full time permanent non-grant basis. Since the said post of Assistant Teacher in Geography was either on part time basis or on clock hour basis till the academic year 2013-2014 and further since there was no advertisement for the post of full time Assistant Teacher in Geography, as such attempt by the management to appoint the petitioner as a full time teacher with effect from 18.07.2012 could not be considered.

23. The post of Assistant Teacher in Geography became admissible only from the academic year 2013-2014. Therefore, appointment of the petitioner as a full time teacher from 17.6.2012 is not sustainable.

24. In the circumstances, it is contended that since the procedure for appointing full time teacher was not adhered to and also appointment of the petitioner as full time teacher was shown as from 17.06.2012, although the said post become admissible for full time teachers only from the academic year 2013-2014; claim of the petitioner does not merit consideration.

25. Mr. Thombre, learned counsel for the petitioner submits that the impugned order dated 21.1.2016 is wholly unsustainable in law as well as on facts. Respondent No.3 had informed respondent No.5 that because of a dispute relating to management of the institution personal approval could not be granted to the petitioner till disposal of such dispute. He submits that the dispute was relating to who would control the management of respondent No.5. It had got nothing to do with the selection and appointment of the petitioner. Therefore, on this ground, it was not open to respondent no.3 to keep in abeyance the personal approval of the petitioner. Insofar as the additional reply affidavit filed by respondent No.3 is concerned, he submits that the grounds given therein declining approval to the petitioner are clearly an afterthought and cannot be countenanced. In any case, those are an improvement over the impugned order dated 20.01.2016. Relying on the decision of the Supreme Court in the case of **Mohinder Singh Gill Vs. Chief Election Commission, AIR 1978 SC 851**, he submits that such an improvement is not permissible in law and the grounds given subsequently would be treated as *non-est* in law. In the circumstances, he

submits that the impugned order may be set aside and respondent No.3 may be directed to grant approval to the appointment of the petitioner as Assistant Teacher in respondent No.5/School on full time basis.

26. *Per contra*, Mrs. M. A. Deshpande, learned AGP has referred to the initial reply affidavit filed on behalf of respondent No.3 and submits that respondent No.3 had informed respondent No.5 vide letter dated 09.01.2015 as to why the proposal could not be approved. This was followed by the impugned order dated 20.01.2016. Therefore, the two orders are required to be read as a whole.

27. In his reply, Mr.Thombre submits that in the reply affidavit respondent No.3 has stated in paragraph No.5 thereof that respondent No.5 had submitted the documents on 15.03.2015 as per letter dated 09.01.2015. Therefore, the deficiencies pointed out by the letter dated 09.01.2015 were removed by respondent No.5 on 15.03.2015. It was thereafter that impugned order dated 20.01.2016 was passed which is wholly unsustainable in law.

28. Mr. Solanke, learned counsel for respondent Nos.4 & 5 has referred to the reply affidavit filed by the said respondents and supports the case of the petitioner by contending that all relevant documents were submitted to respondent No.3 along with the proposal.

29. Submissions made by learned counsel for the parties have received the due consideration of the Court.

30. The impugned order dated 20.01.2016 is in Marathi. The same has therefore been translated into English by the Translation Wing of the Registry.

On translation, impugned order dated 20.01.2016 reads as under:

“

O.W./Edu.Dy.Dir./La/Jr.Col.-
3/SBU/2015-16
Office Divisional Education Director,
Latur Region, Latur
Date: 20 Jan, 2016.

To,

The Principal,
Late Savitribai Phule Secondary & Higher Secondary School,
Satephal, Tq. Kalamb, Dist. Osmanabad.

Subject :- Regarding personal approval for the permanent non-grant basis post.

Reference :-
1. Your Proposal Letter No. 78 dtd. 30.10.2015
2. Hearing conducted in this office on dtd.18.12.2015

In view of the subject cited above, the hearing of the proposal of the personal approval for the permanent non-grant basis post of Shri. Gore Navnath Narsingh, Asst. Teacher working at Late Savitribai Phule Secondary & Higher Secondary School, Satephal, Tq. Kalamb, Dist. Osmanabad, in accordance with reference no. 2, has been conducted in this office. As it is pointed out through the record of hearing that there is a dispute in the management of institution, the personal approval could not be granted to Shri. Gore N.N. till the final disposal of the dispute of the management of institution.

Sd/-

Headmaster,
Late Savitribai Phule Secondary &
Higher Secondary School,
Satephal, Tq. Kalamb, Dist.
Osmanabad.

Sd/-

(Khandake V. K.)
Dy. Director Education.
Latur Division, Latur.

”

31. A perusal of the said order which is in the form of a letter would go to show that proposal was submitted by respondent No.5 on 30.10.2015 for grant of personal approval to the permanent non-grant basis post held by the petitioner. It is also seen that a hearing had taken place in the office of respondent No.3 on 18.12.2015. Respondent No.3 informed respondent No.5 that there was a dispute in the management of the institution. Therefore personal approval could not be granted to the petitioner till the final disposal of the dispute as to management of the institution.

32. From the pleadings as well as during the hearing it become evident that the dispute referred to in the order 20.01.2016 was in relation to management of the institution by rival claimants. Such dispute had no nexus or connection with the selection and appointment of the petitioner and the approval sought for. Just because there was a dispute as to control of management of the Institution that could not have been a ground to decline approval or to keep such approval in abeyance. Routine affairs of the institution including appointments and approvals thereto are to be considered *de-hors* such tussle as to management of the institution. That being the position impugned order dated 20.01.2016 cannot be sustained and is liable to be set aside and quashed.

33. Insofar as the additional reply affidavit filed by respondent No.3 is concerned, the grounds given thereunder for not granting approval to the appointment of the petitioner are beyond the ground mentioned in the impugned

order dated 20.01.2016 and even beyond the reply affidavit filed on 13.10.2016 and therefore cannot be accepted.

34. In **Commissioner of Police Vs. Gordhandas Bhanji**, AIR 1952 SC 16, Supreme Court speaking through Justice Vivian Bose had succinctly put it that public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. This was referred to with approval by a Constitution Bench of the Supreme Court in *Mohinder Singh Gill (Supra)* wherein it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. It was opined that orders are not like old wine becoming better as they grow older.

35. Thus having regard to the discussions made above, we are of the view that attempt by respondent No.3 to improve upon the impugned order dated 20.01.2016 by filing additional reply affidavit dated 12.2.2019 cannot be

accepted and on that basis, validity of the impugned order cannot be judged. We have already discussed and taken the view that on the basis of the reason given in the impugned order for not granting approval to the appointment of the petitioner, impugned order dated 20.01.2016 cannot be justified.

36. Accordingly and in the light of the above, we set aside and quash the impugned order dated 20.01.2016 issued by respondent No.3 and further direct respondent No.3 to consider grant of approval to the appointment of the petitioner as Assistant Teacher on full time basis in respondent No.5/School within a period of six weeks from the date of receipt of a copy of this order with due intimation to the petitioner and respondent No.5.

37. Writ Petition is accordingly allowed. However, there shall be no order as to costs.

38. Rule made absolute in the above terms.

(M. G. SEWLIKAR, J.)

(UJJAL BHUYAN, J.)