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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3708 OF 2018

Sandiprao V. Savant	...Petitioner
V/s.	
President / Secretary, Agrani Shikshan Prasarak Mandal & Ors.	...Respondents

Mr.Kishor Patil i/b Mrs.Aarti P. Bhide for the Petitioner.

Mr.V.M. Mali, AGP for the State - Respondent Nos.3, 4 and 6.

CORAM : R.D. DHANUKA &
A.K. MENON, JJ.
DATE : 23RD AUGUST, 2021.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 4th April, 2019 passed by the Education Officer thereby rejecting the proposal submitted by the management to the appointment of the petitioner on the post of Shikshan Sevak. The petitioner also prays for an order and direction against the respondent nos.1 to 4 to approve the post of the petitioner as Shikshan Sevak and to appoint him as Assistant Teacher on the clear and permanent vacancy in the respondent no.1 school.

2. The petitioner possesses requisite qualifications

contemplated under Schedule B of MEPS Act. The petitioner was appointed as Shikshan Sevak in the school run by the respondent no.1 in the vacancy arisen due to the retirement of the earlier Assistant Teacher. Before filling up the said post, the management contacted the Education Officer vide letter dated 19th November, 2013 for filling up the vacancy of surplus teacher if any. The petitioner also applied for permission to issue advertisement. There was no response to the said letter.

3. The management issued an advertisement on 21st November, 2011. It is the case of the petitioner that after following all the requisite selection process, the petitioner was appointed in the said post of Shikshan Sevak. The petitioner joined the said post on 2nd December, 2013. On 3rd February, 2017 the management sent a proposal to the Education Officer for the appointment of the petitioner to the said post. Since there was no decision on the said proposal sent by the management, the petitioner filed this writ petition. During the pendency of the petition, the Education Officer vide letter dated 4th April, 2019 rejected the said proposal on various grounds. The petitioner amended the writ petition and impugned the said order dated 4th April, 2019 on various grounds.

4. Mr.Patil, learned counsel for the petitioner invited our attention to various correspondence in support of the submission that

the said post had fallen vacant due to retirement of the erstwhile Assistant Teacher prior to 19th November, 2013. The management had applied for permission to issue advertisement. There was no response to the said letter. He also invited our attention to the proposal submitted by the management to the respondent no.3 and would submit that the said proposal itself would clearly indicate that there was full time post available in view of the vacancy having arisen due to the retirement of the erstwhile Assistant Teacher. The management had also annexed a copy of the roster. There was no full time post created and that roster compliance was made by the management.

5. It is submitted by the learned counsel for the petitioner that the impugned order rejecting the proposal made by the management is on the ground that in view of the Government Resolution dated 2nd May, 2012, there was ban on a fresh recruitment under clause 1.8. The approval is also rejected on the ground that no permission was obtained before issuing an advertisement. The approval is also rejected on the ground that the roster was not complied with. The copy of the advertisement was not issued.

6. It is submitted that each and every ground raised in the impugned order is totally baseless. It is submitted by the learned counsel for the petitioner that at the first instance, the Government

Resolution dated 2nd May, 2012, imposing ban on fresh recruitment by creating a post itself was not applicable to the facts of this case. He submits that there was no new post created on which the petitioner was appointed. The appointment of the petitioner was made on the vacant post having arisen due to the retirement of the erstwhile teacher. So far as the ground that no permission was taken before issuance of the advertisement is concerned, learned counsel invited our attention to the letter addressed by the petitioner to the Education Officer seeking permission and states that there was no response to the said letter within the reasonable time. The petitioner had also forwarded a copy of the advertisement subsequently to the Education Officer while submitting the proposal by the management. He submits that the management had already followed the roster.

7. Learned counsel submits that in any event on the ground of backlog of reserved category candidate not cleared, the proposal could not have been rejected.

8. Mr.Mali, learned AGP for the State would submit that the management had not taken prior permission from the competent authority before issuance of the advertisement. In our view, there is no substance in this submission made by the learned AGP the management had applied for permission. It is not the case of the Education Officer that no such permission was applied by the

management. It is also not the case of the Education Officer that there was any response to the application made by the management.

9. Learned AGP does not dispute that when the petitioner was appointed on the post having fallen vacant due to the retirement of the erstwhile assistant teacher. By the said Government Resolution dated 2nd May, 2012, there was ban on creation of the new post. In our view the said ban would not apply to the appointment made on the vacant post. It was not the case of creation of a new post. The order shows non-application of mind on the part of the Education Officer while rejecting the approval to the post of the petitioner. The petitioner had also annexed a copy of the advertisement issued by the management in the proposal sent to the Education Officer. In our view, each and every ground raised in the impugned order is factually incorrect and contrary to law. The impugned order thus deserves to be quashed and set aside.

10. We accordingly pass the following order :-

a). The impugned order dated 19th January, 2019 passed by the respondent no.3 rejecting the proposal for approval to the post of the petitioner as Shikshan Sevak is quashed and set aside.

b). The respondent nos.1 to 4 are directed to approve the appointment of the petitioner to the post of Shikshan Sevak from the date of the appointment within four weeks from today. The

respondent nos.1 to 4 shall release the grant payable on the said post with effect from the date of appointment of the petitioner to the management within four weeks from the date of passing of approval to the said post.

c). The writ petition is disposed of in above terms. There shall be no order as to costs.

d). Parties to act on the authenticated copy of this order.

(A.K. MENON, J.)

(R.D. DHANUKA, J.)