

Prajakta Vartak

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

WRIT PETITION NO.8042 OF 2021

Maharashtra Education Society	...Petitioner
V/s.	
Shivhar Bharat Lahane & Ors.	...Respondents

**WITH
INTERIM APPLICATION NO.3639 OF 2021
IN
WRIT PETITION NO.8042 OF 2021**

Shivhar Bharat Lahane	...Applicant
In the matter between	
Maharashtra Education Society	...Petitioner
V/s.	
Shivhar Bharat Lahane & Ors.	...Respondents

Mr. Y. S. Jahagirdar, Senior Advocate with Mr. Neel Helekar for Petitioner.
Mr. V. S. Gokhale, 'B' Panel counsel for State.
Mr. Subhash Gutte for Respondent No.1/Applicant in IA No.3639/21.

**CORAM : G. S. KULKARNI, J.
DATE : DECEMBER 08, 2021**

PC :

1. Heard Mr. Jahagirdar, learned senior counsel for the petitioner, Mr. Gutte, learned counsel for respondent no.1 and Mr. Gokhale, learned 'B' Panel counsel for the State.
2. The challenge in this petition is to an order dated 4 December, 2020 passed by the learned Presiding Officer, School Tribunal, Pune. By the impugned order, the appeal filed by respondent no.1 challenging an order

of otherwise termination dated 30 September, 2016 made against him by the petitioner is quashed and set aside with a further direction that the respondent no.1 be reinstated on his original post with continuity of service along with back wages from the date of termination.

3. Mr. Jahagirdar, in assailing the impugned order, would submit that it was an undisputed position on record that respondent no.1 was appointed on temporary basis even under the advertisement dated 24 April, 2012. It is his submission that even the advertisement for subsequent years that is 2013 onwards issued by the petitioner intended appointments to be made on temporary basis under which respondent no.1 had applied and was granted temporary appointment. It is his submission that however the School Tribunal has proceeded on the first advertisement dated 24 April, 2012 which inadvertently did not mention that it was for filling up a post on temporary basis, although the appointment order issued to respondent no.1 under the said advertisement was also a temporary appointment.

4. Prima-facie on a perusal of the impugned order, it can be seen that there is no discussion by the tribunal on the issues which were urged by the petitioner. Mr. Jahagirdar has also pointed out that there was no material which would show that a post was available to make appointment of

respondent no.1 on a clear vacancy and more particularly when the petitioner is in an aided school.

5. Considering the aforesaid peculiar circumstances, this Court (M. S. Karnik, J.) by an order dated 15 February, 2021 permitted a proposal to be made to the Education Officer for creation of one post, which if was to be sanctioned and approved, then respondent no.1's appointment could be regularized.

6. Mr. Jahagirdar has also submitted that a surplus teacher was also sought to be appointed by the State Government although no post was available. The State Government has continued to pay the salary of such surplus teacher.

7. In pursuance of the order dated 15 February, 2020 passed by this Court, a proposal was made by the petitioner on 2 April, 2021 which came to be rejected by the Education Officer (Secondary), Zilla Parishad, Pune, by his letter dated 12 April, 2021 pointing out that the process as undertaken by the petitioner in appointing respondent no.1 was to make only temporary appointment. As to whether the Education Officer was correct in rejecting such proposal as made by the petitioner although as permitted by

an order dated 15 February, 2021 passed by this Court, in my opinion, cannot be a subject matter of adjudication in the present proceedings as the jurisdiction of the Court would be confined to the legality of the order passed by the school tribunal as challenged by the petitioner. In such situation, if the petitioner as also respondent no.1 are aggrieved by such communication of the Education Officer dated 12 April, 2021, it is open to them to pursue appropriate remedies. If such proceedings are initiated, all contentions of the parties in that regard are required to be kept open, to be agitated in such proceedings.

8. In so far as the impugned order passed by the tribunal is concerned, it is clear that the consequences, which were brought about by the subsequent advertisements as issued by the petitioner calling for applications to make temporary appointments, have been overlooked in answering issue no.1. It appears that the tribunal has proceeded on the basis that the first advertisement dated 24 April, 2012. The appointment of respondent no.1 under which in fact had lost its efficacy, once the petitioner had re-applied on the basis of subsequent advertisements and accepted temporary appointments.

9. In the light of the above discussion, the following order is passed:-

ORDER

- i. Rule. Respondents waive service.
- ii. Pending the hearing and final disposal of this petition, execution of the impugned order dated 4 December, 2020 passed by the learned Presiding Officer, School Tribunal, Pune shall remain stayed.
- iii. It is clarified that the petitioner as also respondent no.1 are at liberty to pursue appropriate proceedings, if they are aggrieved by the decision of Education Officer (Secondary) dated 12 April, 2021 rejecting the proposal of the post. All contentions in that regard are expressly kept open.

10. In view of the above orders, the interim application would not survive. It is accordingly disposed of.

11. Parties to act on an authenticated copy of this order.

(G. S. KULKARNI, J.)

Digitally signed
by PRAJAKTA
SAGAR
VARTAK
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