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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5901 OF 2018

Sagar S. Mandal & Anr.	...Petitioners
V/s.	
The State of Maharashtra & Anr.	...Respondents

Mr.Narendra V. Bandiwadekar with Mr.Vinayak Kumbhare i/b
Mr.Mandar G. Bagkar for the Petitioners.

Mr.Vikas M. Mali, AGP for the State – Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.
DATE : 18TH AUGUST, 2021.

P.C. :-

1. Rule. Mr.Mali, learned AGP waives service for the respondents. By consent of the parties, the petition is heard finally.
2. By this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the order dated 21st July, 2017 passed by the respondent no.2 rejecting the proposal for approval of the appointment of the petitioner no.2 in the year 2008 as Junior Clerk in the aided secondary school run by the petitioner no.1.
3. The petitioner no.2 belongs to Hindu Agri Caste (O.B.C.) and has passed 12th standard (science). He has also passed

certificate course in Information Technology in April, 2001 and thus he is qualified for the post of junior clerk. Some time in the year 2008, 12 posts of junior clerks were vacant in the school run by the petitioner no.1. The petitioner no.2 was selected to the said post after following due selection process. On 10th June, 2008, the Managing Committee passed a resolution for the appointment of the petitioner no.2 as a junior clerk. The appointment order was accordingly given to the petitioner no.2 on 16th June, 2008. The Head Master of the school run by the petitioner no.1 requested to grant approval to the appointment of the petitioner no.2 to the said post. In the year 2008, certain queries were made by the respondent no.2 on 19th April, 2010 which were responded by the head master of the school run by the petitioner on 19th April. 2010.

4. The head master of the school run by the petitioner no.1 requested the respondent no.2 to grant approval to the petitioner no.2 on 4th July, 2014 and 14th July, 2014 since the ban was no longer in force, however, no decision was taken on the approval of the petitioner no.2 at the request of the head master. The petitioner accordingly filed Writ Petition No.11060 of 2014 in this Court in the year 2014. This Court directed the respondent no.2 to take a decision in accordance with law.

5. The respondent no.2 sought guidance from the higher

authorities about the applicability of the Government Resolution (GR) in the facts of this case from the Deputy Director of Education. Vide letter dated 21st March, 2017, the Deputy Director of Education (Secondary) directed the Education Officer to follow the GR applicable for approval on the date of appointment. The respondent no.2 however passed an order dated 21st July, 2017 rejecting the proposal made by the management to the appointment of the petitioner no.2 to the post of junior clerk on three grounds. The petitioners thus have filed this petition for quashing the said order dated 31st July, 2017.

6. Mr.Bandiwadekar, learned counsel for the petitioners invited our attention to the impugned order dated 31st July, 2017 and would submit that though it is an admitted position that the said post of junior clerk was an isolated post on which the petitioner was appointed, the appointment of the petitioner no.2 is rejected on the ground that the roster was not followed by the management.

7. Learned counsel for the petitioners would submit that the approval is also rejected on the ground that the resolution dated 6th February, 2012 and GR dated 12th February, 2015 have not been followed by the management. He submits that both the reasons recorded by the Deputy Director of Education (Secondary) are *ex-facie* illegal in view of the admitted position that the petitioner no.2

was appointed to the post of junior clerk on 16 July, 2008 i.e. much prior to the issuance of these Government Resolutions. He relied upon the judgments annexed at pages 56 to 59 of this Court delivered on 29th April, 2016 in case of Niraj Rajaram Dhukate & Anr. vs. The State of Maharashtra & Anr. in Writ Petition No.8929 of 2014 and judgment of this Court delivered on 13th July, 2021 in case of Dilip Baburao Patil vs. State of Maharashtra & Ors. in Writ Petition No.3175 of 2020.

8. Mr.Mali, learned AGP for the respondents invited our attention to some of the averments made in the affidavit in reply filed by the respondent no.2 affirmed on 26th August, 2019 and would submit that due to various reasons recorded in the affidavit in reply, the impugned order rejecting the approval to the appointment of the petitioner no.2 to the said post of the junior clerk is justified.

9. Mr.Bandiwadekar, learned counsel for the petitioners in rejoinder would submit that the respondent no.2 has supplanted the reasons for the first time in the affidavit in reply which were not recorded in the impugned order refusing to grant the approval to the appointment to the said post of the junior clerk. Mr.Mali, learned AGP does not dispute this position.

10. It is not in dispute that the petitioner no.2 was appointed on 16th June, 2008. The management had applied for approval to the

said appointment of the petitioner to the respondent no.2. The respondent no.2 had sought guidance from the Deputy Director of Education (Secondary) about the applicability of the GR to the said appointment of the petitioner no.2. A perusal of the letter dated 21st March, 2017 issued by the Deputy Director of Education to the Education Officer clearly indicates that the Deputy Director of Education had advised to the Education Officer to apply the GR prevailing on the date of appointment and not on the date of considering the proposal made by the management. The respondent no.2 however in ignorance of the said advise received from the Deputy Director of Education (Secondary) and without following the provisions of law, passed the impugned order, rejecting the said approval on three grounds.

11. It is an admitted position that the said post of the junior clerk is an isolated post and thus question of applicability of roster to the said post did not arise. The rejection of the approval of the petitioner no.2 on that ground is contrary to the well settled principles of law laid down by the Supreme Court and thus Court in catena of decisions.

12. In paragraphs 2 and 3, the respondent no.2 has rejected the approval on the ground that the appointment was invalid on the ground of alleged non-compliance of the GR dated 6th February, 2012

and 12th February, 2012. The respondent no.2 totally over looked the admitted position that the appointment of the petitioner no.2 was made in the year 2008. None of these G.Rs. issued on 6th February, 2012 and 12th February, 2012 were applicable to the said appointment. These resolutions apply with prospective effect and not with retrospective effect. This Court in case of Niraj Rajaram Dhutake (supra) has considered this issue and has held that the G.R. which was placed in service in that matter was made applicable prospectively, whereas the appointment of the petitioner no.2 being prior to the issuance of the G.R. the same cannot be a ground to reject the approval of the appointment of the petitioner no.2. This Court in a detailed judgment in case of Dilip Baburao Patil (supra) has after adverting to various judgments had taken an identical view. We do not propose to take a different view in the matter.

13. In our view since both the G.Rs. were applicable with prospective effect, the same could not be pressed in service for rejecting the approval to the said post of junior clerk.

14. Insofar as the reasons recorded in the affidavit in reply filed by the respondent no.2 which according to the learned AGP can be considered by this Court though not recorded in the impugned order are concerned, this Court cannot accept this submission. The reasons cannot be supplanted in the affidavit in reply to justify the

impugned order.

15. Learned AGP could not distinguish any of the judgments relied upon by Mr.Bandiwadekar. In our view, the impugned order is totally illegal, perverse and contrary to law laid down by this Court and thus deserves to be set aside.

16. We accordingly pass the following order :-

a). Rule is made absolute in term of prayer clause (b). Grant in aid for the payment of salary of the petitioner no.2 from the date of appointment shall be released within eight weeks from today. Approval shall be granted within four weeks from today.

b). The respondent no.2 shall include the name of the petitioner no.2 in the Salarth ID within two weeks after the date of granting approval.

c). The writ petition is allowed in aforesaid terms. Rule is made absolute. There shall be no order as to costs.

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

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)