

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10710 OF 2017

Digambar Dadu Khavare ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. Prashant Bhavake for Petitioner.
Ms. S. S. Bhende for Respondent Nos.1 and 2-State.

**CORAM : R. D. DHANUKA &
R. N. LADDHA, JJ.**

DATE : DECEMBER 16, 2021

P.C. :-

Mr. Bhavake, learned counsel for the petitioner seeks liberty to delete respondent Nos.3 and 4 from the cause title of the petition. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Ms. Bhende, learned AGP waives service for respondent Nos.1 and 2. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 14.09.2016 passed by respondent No.2 - Education Officer refusing to grant approval to the appointment of the petitioner to the post of *Shikshan Sevak*.

4. Case of the petitioner is that Shri. Prabhakar K. Sorate who was occupying the said post of *Shikshan Sevak* retired on 31.05.2013. In view of the said vacancy, the management applied for permission to issue advertisement on 17.05.2013. Since the permission was neither rejected nor granted for quite some time, the management ultimately advertised the said post in two newspapers on 28.05.2013. Pursuant to the said advertisement, the petitioner applied for the said post in the

vacancy scheduled to be created on 31.05.2013 and was appointed by the management on 15.06.2013. The management thereafter applied to the Education Officer for approval for appointment of the petitioner in the said post. By the impugned order, the Education Officer rejected the said proposal on the ground that there was a ban under the Government Resolution dated 02.05.2012 from creating any new post after 02.05.2012.

5. Mr. Bhavake, learned counsel for the petitioner invited our attention to the said impugned order dated 14.09.2016 and would submit that the management has not created any new post but has sought to fill up the said post fell vacant in view of the retirement of the erstwhile Shikshan Sevak after following the due procedure. He submits that management had applied for permission to issue advertisement before appointing the petitioner on the said post. Though the petitioner had applied for permission, no permission was granted for quite some time by the Education Officer.

6. Learned counsel for the petitioner invited our attention to the judgment of this Court delivered on 23.08.2021 in **Writ Petition No.3708 of 2018** (*Sandiprao V. Savant Vs. President / Secretary, Agrani Shikshan Prasarak Mandal*) and more particularly paragraph 9 and would submit that on the similar set of facts, this Court had quashed and set aside the order passed by the Education Officer rejecting the proposal for approval to the post of petitioner as *Shikshan Sevak* on the ground that there was ban on creation of a new post.

7. Ms. Bhende, learned AGP for the respondents-State on the other hand invited our attention to the paragraphs 3 and 8 of the affidavit in reply filed by the State Government. It is submitted by the learned AGP that there was a ban on recruitment of teachers as well as non-teaching staff *vide* Government Resolution dated 02.05.2012. The management had not obtained permission from the Education Officer before issuance

of the advertisement. She submits that the surplus teachers were not absorbed before appointing the petitioner on the said post of *Shikshan Sevak*.

8. A perusal of the record clearly indicates that it is not in dispute that the said post of *Shikshan Sevak* fell vacant in view of the retirement of the erstwhile *Shikshan Sevak* Shri. Prabhakar K. Sorate on 31.05.2013. A perusal of the Government Resolution dated 02.05.2012 would clearly indicate that the same was in respect of ban on creation of a new post from the date of issuance of the said Government Resolution. In this case, the management did not create any new post after 02.05.2012 on which the petitioner was appointed. The petitioner was appointed on the post having fallen vacant due to the retirement of the erstwhile *Shikshan Sevak* Shri. Prabhakar K. Sorate on 31.05.2013.

9. A Division Bench of this Court in the case of **Sandiprao V. Savant** (*supra*) has held that under the said Government Resolution dated 02.05.2012, there was a ban on creation of a new post. The said ban would not apply to the appointment made on the vacant post. It was not the case of the State Government that the petitioner was appointed on the post which was a new post created by the management. In our view, the impugned order rejecting the approval for appointment of the petitioner to the post of *Shikshan Sevak* on the ground that the appointment was illegal in view of violation of the Government Resolution dated 02.05.2013 is totally perverse and without application of mind. The principles of law laid down by this Court in the case of **Sandiprao V. Savant** (*supra*) clearly applies to the facts of this case.

10. In so far the other two issues raised by the State Government in the affidavit in reply that the management had not filled up any surplus teachers is concerned, a perusal of the said impugned order clearly indicates that the approval to the appointment of the petitioner is not rejected on that ground. Be that as it may, no material is produced in the

affidavit in reply in support of the said contention.

11. So far as the contention raised by the respondents in the affidavit in reply that the management had not taken prior approval of respondent No.2 for publishing advertisement in the newspaper for the said post is concerned, we have perused the document annexed by the petitioner to the petition viz. a letter dated 17.05.2013 addressed by the management to the Education Officer seeking permission for issuance of the advertisement. Permission was neither granted nor rejected by the Education Officer within the reasonable period of time. The management accordingly issued the said advertisement. Approval of the petitioner is not rejected on the ground that the management had not applied for permission. Even otherwise, the said contention raised in the affidavit in reply is based on wrong factual premises.

12. In our view, the impugned order is contrary to the principles of law laid down by this Court in the case of **Sandiprao V. Savant** (*supra*) and thus deserves to be quashed and set aside.

13. We accordingly pass the following order:-

- a. Writ Petition is allowed in terms of prayer clause (A);
- b. Respondent No.2 - Education Officer is granted four weeks' time to grant approval to the appointment of the petitioner to the post of *Shikshan Sevak* pursuant to the proposal submitted by the management;
- c. After the approval is granted by the Education Officer, the Deputy Director of Education shall enter name of the petitioner in *Shalarth Pranali* within two weeks thereafter;
- d. The Education Officer shall thereafter grant all consequential benefits to the petitioner including payment of arrears of salary from the initial date of appointment within four weeks thereafter without fail.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

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

(R. N. LADDHA, J.)

(R. D. DHANUKA, J.)

Minal Parab