

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1222 OF 2018

PETITIONERS: Ku. Sangita Hiragir Giri,
aged about 36 years, Occ. Nil
R/o. Shastri Ward, Railway Station Road,
Tiroda, Tah. Tiroda, District Gondia

...VERSUS...

RESPONDENTS: 1. Bhagwati Shikshan Santha, Mendha,
through its Secretary, Off./at Anudanit
Ravindranath Tagore Primary and
Secondary Ashram School, Mendha,
Post Thanegaon, Tah. Tiroda,
District - Gondia.

2. Anudanit Ravindranath Tagore Primary and
Secondary Ashram School, Mendha,
Post Thanegaon, Tah. Tiroda, District - Gondia,
through its Headmaster.

3. Additional Commissioner, Tribal Development
Department, Giripeth, Nagpur.

4. Shri Raut, Assistant Teacher, Anudanit
Ravindranath Tagore Primary and
Secondary Ashram School, Mendha,
Post Thanegaon, Tah. Tiroda, District - Gondia
(Petition dismissed against R-4 vide order
dated 26.07.2019 of Registrar (Judicial)).

Shri N.S.Warulkar, Advocate for petitioner.
Ms. H.Jaipurkar, AGP for respondent No.3.
None for respondent nos. 1 and 2

CORAM : AVINASH G. GHAROTE, J.
DATE : 11/02/2021.

1] The matter was admitted on 01.03.2018. The application for early hearing as filed by the petitioner is allowed today and the matter is heard finally.

Heard Shri Warulkar, learned advocate for petitioner and Ms. H. Jaipurkar, learned AGP for respondent No.3. Mr. I.N.Choudhari, learned counsel for respondent No.1 absent. None present for respondent No.2 though served. Petition is already dismissed in default against respondent No.4.

2] The petition challenges the judgment dated 30.11.2017 passed by the learned School Tribunal, Nagpur, whereby the Appeal No. 26/2016 filed by the petitioner against an alleged oral termination came to be rejected.

3] The grounds which are canvassed are two fold. The first is that the petitioner was eligible to be appointed as Gram Sewak and fulfilled the qualification as indicated in the advertisement dated 7.4.2008. It is further contended that the appointment of the petitioner was on probation, after which the petitioner was sent for acquiring D.Ed qualification which having been so acquired, was not permitted to join the institution, treating which to be an oral

termination, the petitioner had approached the learned School Tribunal. The learned School Tribunal found that the contention that the petitioner was appointed on probation was incorrect, as the appointment order did not so indicate. The appointment order only shows that the appointment of the petitioner was for a period from 14.6.2008 to 13.6.2011. The tribunal further found that the advertisement by the management though had invited applications for appointment of untrained teachers having qualification of H.S.S.C from NT category, the names were not called from Employment Exchange, as a result of which, the approval sought for the appointment of the petitioner, came to be rejected. The appointment was also held to be illegal for the reason that persons having higher marks in the H.S.S.C were bypassed in favour of the petitioner, which was in violation of the G.R. dated 27.2.2003.

4] The learned Tribunal further found that the claim of the petitioner that she was deputed for obtaining D.Ed qualification, as claimed by the petitioner, was incorrect, as there was no such order whatsoever, passed by the management. The petitioner herself had raised a plea to the effect that her absence from 13.5.2011 to 1.9.2014, was being treated by the management as abandonment of

her services and in light of the provisions of Rule 16 (3) of M.E.P.S. Rules, such an action was impermissible without issuing notice to the petitioner and a disciplinary action as contemplated therein, whereas in fact Rule 16 of the said Rules was not at all attracted, for the reason that the petitioner was not a permanent employee.

5] Mr. Warulkar, learned counsel for the petitioner, submits that the impugned judgment of the Tribunal is incorrect as it does not consider the G.R. dated 27.2.2003 in its correct perspective, apart from which the petitioner was appointed on a probationary basis and was also deputed for obtaining higher qualification.

6] Ms. Jaipurkar, learned AGP for respondent no.3 opposes the petition and submits that the appointment of the petitioner itself was illegal inasmuch as there were persons who were having higher marks in H.S.S.C, who were not considered, as found by the Additional Commissioner, Tribal Department in his order dated 29.3.2011, apart from which, the process as required under the law for filling the vacancies was not followed as indicated from the second para of the order refusing approval at record page 33.

7] Having heard the learned counsel for the parties present, I do not see any infirmity in the judgment as passed by the learned School Tribunal. The appointment order of the petitioner, dated 10.6.2008, does not anywhere depict that the appointment of the petitioner was on probation. It only indicates that the appointment was for a fixed period from 14.6.2008 to 12.6.2011. It is also an admitted position that the approval to the appointment of the petitioner was rejected for the reasons as stated in the order dated 29.3.2011, which has been considered by the Tribunal in its correct perspective. The contention by learned counsel for the petitioner that the petitioner was deputed for obtaining higher educational qualification is also not borne out from any document on record, which being the position, the plea as raised in this regard has rightly been rejected by the learned Tribunal.

8] Reliance by Mr. Warulkar, learned counsel for the petitioner, in the case of *Sudhakar Chindu Bhadane vrs. Niphad Taluka Education Society and others*, reported in **2008 (1) Mh.L.J. 448** is misplaced for the reason that the provisions of Rule 16 (3) of the Maharashtra Employees of Private Schools (Condition of Service)

Rules, 1981, are clearly not attracted in the facts of the present matter. The further reliance on *Smita Manohar Ramteke vrs. State of Maharashtra and others*, reported in **2016 (4) Mh.L.J. 158** is also of no assistance to the petitioner for the reason that the approval of the appointment of the petitioner itself was rejected by the Additional Commissioner, Tribal Department.

9] The G.R. dated 27.02.2003 merely provides for what is to be done upon a person having been appointed as a Shikshan Sewak successfully completes his tenure and since the initial appointment of the petitioner itself was found to be not proper, has no applicability. The judgment of the learned Tribunal is a well reasoned one and considers properly the factual position in the background of the law applicable.

10] In the above light of the matter, there is no merit in the petition. The same is, therefore, rejected. Rule is discharged. In the circumstances, there shall be order as to costs.

JUDGE

Rvjalit

**Rajesh
Jalit**

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signed by
Rajesh Jalit
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