

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 CIVIL APPLICATION NO.562 OF 2022

TUKARAM DEVRAO GARJE
VERSUS
THE EDUCATION OFFICER (SECONDARY) ZILLA PARISHED, BEED
AND OTHERS
WITH
CIVIL APPLICATION NO.3025/2021

RURAL DEVELOPMENT FOR YOUTH, AHMEDNAGR
THROUGH ITS PRESIDENT AND ANOTHER
VERSUS
THE EDUCATION OFFICER (SECONDARY) ZILLA PARISHED, BEED
AND OTHERS
WITH
CIVIL APPLICATION NO.7560/2018

MANGALA BHAUSAHEB SHINDE
VERSUS
TUKARAM DEVRAO GARJE AND OTHERS
IN
WRIT PETITION NO.1686/2016
WITH
WRIT PETITION NO.1686/2016

TUKARAM DEVRAO GARJE
VERSUS
THE EDUCATION OFFICER (SECONDARY) ZILLA PARISHAD BEED
AND OTHERS

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Mr. R. L. Wakade, Advocate for the petitioner & applicant in
CA/562/18

Mr. N. T. Bhagat, AGP for the respondent No.1 Education Officers

Mr. S. R. Lokhande, Advocate for respondent No.4.

Mr. B. V. Thombre, Advocate for applicant in CA/3025/21

Mr. S. R. Kolhare Advocate for the applicant in CA/7560/18

CORAM : RAVINDRA V. GHUGE, J.

DATE : 11th March, 2022

ORDER:

1. On 05.10.2016, when this petition was admitted, I had passed a reasoned order as under:

2.

"1. The petitioner is aggrieved by the judgment and order dated 29/09/2015 delivered by the School Tribunal, Aurangabad by which Appeal No.34/2011 filed by the petitioner, challenging his termination w.e.f. 17/07/2011, has been dismissed.

2. I have heard the learned Advocate for the petitioner and the learned Advocates for the respondents for quite some time. Respondent Nos. 2 and 3 have filed an affidavit in reply through the Head Master/respondent No.3.

3. There is no dispute that the petitioner has worked as an "Assistant Teacher" from 2008-2009 till 2010-2011 for 3 academic years. Year to year approval for his temporary engagement was granted by the Education Officer. He was prevented from signing the muster roll from 17/07/2011 and therefore he had alleged oral termination.

4. It is undisputed that when the petitioner was appointed, no advertisement was published. The post of "Assistant Teacher" was vacant and reserved for the V.J.N.T. (A) category. The petitioner belonged to the V.J.N.T. (D) category. Reliance is placed upon Rule 9(9) (a) with Rule

9(7) of the M.E.P.S. Rules, 1981 to contend that the petitioner could be regularized in employment.

5. Respondent No.4 belongs to V.J.N.T.(C) category. An advertisement was published in "Saptahik Wartahar". The petitioner contends that he has been orally removed and respondent No.4 has been accommodated in his place by appointment order dated 22/06/2014. From the first date of appointment, the Management has declared that respondent No.4 will be treated as a permanent employee.

6. It is quite evident that the respondent/Management has orally disengaged the petitioner and has replaced him by appointing respondent No.4 by publishing an advertisement in a Weekly which appears to be unheard of. Obviously, wide publicity was not given while advertising the said reserved post. However, prima facie, it cannot be ignored that the petitioner was appointed in the reserved category without publishing any advertisement as is the requirement of the law.

7. In the light of the above, Rule. Rule is made returnable on 24/11/2016. Learned Advocates for the respective sides waive service on Rule.

8. The services of respondent No.4 shall be subject to the result of this petition and shall not be regularized without leave of this Court or till the disposal of this petition.

9. Record and proceedings in Appeal No.34/2011 decided by the School Tribunal, Aurangabad be called for, forthwith."

2. The petitioner who has suffered an order of rejection before the learned School Tribunal, has preferred a Civil Application No. 562/2022 proposing an amendment to the petition based on subsequent events as he has received certain documents under the Right to Information Act. (RTI Act). Having considered these proposed amendment and documents, the parties were called upon to address the Court on the writ petition itself since a service dispute is involved and this petition is six years old.

3. Today, the submissions of the learned Advocates for the respective sides were heard and with their assistance, I have gone through the record available.

4. The basic grievance of the petitioner is that he was appointed as an assistant teacher vide an appointment order for the academic year 2008-2009, dated 10.06.2008. He was not informed that he was appointed on a post reserved for the NT (A) category. He belongs to the NT (D) category. Under the RTI Act, he has a copy of the letter dated 30.10.2014 addressed by the Chairman of the Rural Development For Youth, Ahmednagar addressed to the Education Officer, Zilla Parishad, Beed stating therein that an advertisement was published in 2008 and since no candidate belonging to the NT(A) category was available, the petitioner was appointed against the

reservation. The approval granted by the Education Officer indicates that it was valid for only one year.

5. The learned Advocate for the petitioner yet strenuously contends that he was continued for three years by the Management and the Education Officer has granted approval for the academic year 2009-10 as well. This was in continuity with the earlier order. He was, thus, continued even for the academic year 2010-11 and completed three years, thereby becoming eligible for the deemed status of a permanent employee under section 5(2) of the MEPS Act, 1976.

6. The learned counsel further submits that the stand taken by the Management is fictitious since the approval granted each year by the Education Officer indicates that even the Education Department is not aware that the petitioner was appointed against the reserved category NT(A). He relies upon the judgment delivered by the learned Division Bench of this Court at *Nagpur in Anjali Jayant Khatik Vs. Bal Mandir Sanstha, Nagpur, 2009 (1) ALL.MR 221*, wherein it has been held that the plea of break in summer vacation and reappointment is not tenable.

7. The learned Advocate for the petitioner makes a further grievance which has already been recorded in Paragraph 5 of the order dated 05.10.2016 reproduced above. Respondent No.4 belongs to the NT (C) category and she has been appointed in place of the petitioner by

appointment order dated 22.06.2011 (wrongly mentioned as 2014). An advertisement was published in Saptahik Wartahar and by accommodating her in place of the petitioner, she is now granted permanent approval. Such advertisement was actually in a Weekly, which is not the correct way of publishing an advertisement for carrying recruitment.

8. The learned Advocate representing the Management, though has opposed the petition contending that he was appointed temporarily for three academic years, he has no explanation as regards the legal position that, if a post is reserved for a particular category and a candidate is not available, a temporary appointment against the reserved category is legally permissible only for one year. For the next academic year, there has to be a fresh advertisement carrying the same reservation roster. If the candidate belonging to the reserved category is not available, such advertisement has to be published every year for a period of five years or till the date the eligible candidate is appointed. However, such attempts are to be made only on five occasions. The Management has not followed this Rule and has appointed respondent No.4 who belongs to NT(C) category and the post is reserved for NT(A) category.

9. The learned Advocate for the newly appointed Respondent no.4 submits that as there was an advertisement in the Weekly Wartahar, she applied for the post and has been selected and appointed. She also was granted permanent approval. However, as the proceedings initiated by this petitioner were pending, her approval was cancelled. She approached the High Court. The cancellation order was set aside and the matter was remitted to the Education Officer for reconsideration. She has not been paid her monthly salary since 2014.

10. Having considered the submissions of the learned Advocates and having perused the record, it is quite glaring that the Management has behaved in a mischievous manner. An advertisement was published according to the document received by the petitioner under the RTI Act and it was pursuant to such advertisement, that the petitioner was appointed. The appointment was for only one academic year. Approval also was for one academic year. Without re-advertising the post, which was reserved, another order of temporary appointment was issued to the petitioner and this was repeated on three occasions. After the disengagement of the petitioner, the Management advertised in an unknown Weekly when the law mandated that the advertisement shall be in at least two newspapers having wide circulation in the region.

11. Even respondent No.4 has been appointed to a post reserved for the NT(A) category when she belongs to NT(C) category. Such behaviour /conduct of the Management ought not to go unpunished.

12. I would find fault even with the Education Officer. The Law mandates that the prior permission of the Education Officer has to be obtained for filling up a vacancy. If no surplus candidate is eligible to be appointed, the Education Officer has to permit the Management to recruit from open competition. Whether it be a temporary approval or an approval on probation or a permanent approval, it is the bounden duty of the Education officer to verify the records meticulously and grant approval only if the management has followed the procedure legally.

13. The present Education Officer should have kept the law in mind while granting approval to the petitioner and also when he granted approval to the appointment of respondent No.4. He should have refused approval even to respondent no.4 keeping in view that the prior permission was not obtained and the advertisement was published in a relatively unknown Weekly. As such, the Management has created a farce while carrying out the recruitment of the petitioner as well as of respondent no.4 and the Education Officer has turned a blind eye to such factors.

14. In the above circumstances, no relief could be granted to the petitioner. The conduct of the Management cannot be pardoned. Moreover, to prevent such farcical stage managed selection processes and to avoid exploitation of teachers, the State of Maharashtra needs to be directed to instruct all Education Officers that if approvals are granted to irregular or illegal appointments, heavy costs should be imposed on the Education Officers besides initiating strict disciplinary action.

15. The issue that naturally crops up while refusing relief to the petitioner is, as to whether his case could be considered under section 11 (2)(e) of the MEPS Act. Taking into account the above narrated factors and the observations made by me, it would be appropriate to direct Respondent No. 2 Management to pay six months gross salary to the petitioner as per the current rate/scale applicable, as compensation under section 11(2)(e) of the Act.

16. In view of the above, this petition is dismissed.

17. Respondent No.2 Management is directed to pay six months gross salary of an Assistant Teacher at the present scale, to the petitioner, on or before 30.04.2022 from its own coffers. This amount shall not be drawn from the salary or non-salary grants available to the Institution, if any.

18. The Principal Secretary/Additional Chief Secretary, School Education, is directed to instruct all the Chief Executive Officers of the Zilla Parishads and the Education Departments in the State of Maharashtra to ensure that no Education Officer would grant approval to any appointment if the following conditions are not complied with:

- (a) Every Management would apply to the Education Officer, Zilla Parishadas seeking permission to recruit an eligible surplus teacher against a vacancy .
- (B) Vacancy shall be filled in through the surplus candidates recommended by the Education Officer. If no eligible surplus teacher is available, the Education Officer would permit the Management to fill in the vacancy through open competition subject to the reservation applicable and the post being advertised in two largely circulated newspapers in the region.
- (C) No approval shall be granted to any irregular or illegal appointment.
- (D) The Principle Secretary/Additional Chief Secretary, School Education is directed to prepare and approve ,with the assistance of the Chief Executive Officer of of each Zilla Parishad, a list of widely circulated Newspapers within the

jurisdiction of each Zilla Parishad and advertisement would be permitted to be published only in such approved list of newspapers.

(E) The learned Registrar (Judicial) of this Court is instructed to place a copy of this Judgment before the Chief Secretary, State of Maharashtra and the Principal Secretary/Additional Chief Secretary, School Education, urgently.

(F) The compliance of these directions to be made by the Principal Secretary/Additional Chief Secretary, School Education shall be reported to this Court on or before 30th June, 2022.

19. Pending civil applications would not survive and stand disposed off.

(RAVINDRA V. GHUGE, J.)

JPC