

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

WRIT PETITION NO.3210 OF 2019

Bhanudas Pandharinath Tamnar,
Age 45 yrs., Occ. Service,
R/o Tamnar Akhada, Tq. Rahuri,
Dist. Ahmednagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra,
 Through it's Secretary,
 Sports and Education Department,
 Mantralaya, Mumbai – 32.
- 2 The Education Officer,
 (Secondary), Zilla Parishad,
 Ahmednagar, Tq. & Dist. Ahmednagar.
- 3 The Secretary/President,
 Shri. Shivaji Shikshan Prasarak Mandal,
 Shivaji Nagar, Tq. Rahuri,
 Dist. Ahmednagar.
- 4 The Headmaster,
 Pragati Vidyalaya, Rahuri,
 Tq. Rahuri, Dist. Ahmednagar.

... Respondents

...

Mr. R.B. Temak, Advocate for petitioner

Mrs. M.A. Deshpande, AGP for respondent Nos.1 and 2

Mr. V.P. Patil, Advocate for respondent Nos. 3 and 4

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

RESERVED ON : 10th NOVEMBER, 2022

PRONOUNCED ON : 08th DECEMBER, 2022

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

1 The petitioner was appointed to the post of Assistant Teacher with the school of respondent No.3 – Society after following due procedure of law on 29.04.1996. It is stated that the said appointment was on clear, vacant and permanent post. The services of the petitioner came to be illegally terminated on 13.06.2002 and, therefore, he had filed Appeal No.65/2003 before the learned School Tribunal, Solapur. Learned School Tribunal, Solapur after evaluating the necessary material allowed the appeal on 21.04.2006 and directed the reinstatement of the petitioner by granting continuity of service and 50% of the back wages with all consequential benefits from respondent Nos.1 and 2. According to the petitioner, in view of the said order, which was thereafter not challenged by anybody, he would have been entitled to all the benefits as granted under the order. However, the respondent No.2 – The Education Officer (Secondary), Zilla Parishad, Ahmednagar granted approval on 11.02.2008 to the petitioner from 14.06.1999 instead of 24.06.1996. The said order is in fact contrary to the

order passed by learned School Tribunal, Solapur. The petitioner put his grievance to the office of respondent No.2 to correct the said date by making communication. The respondent No.3 – Society has also addressed the similar communication to the respondent No.2 – Education Officer on 17.08.2013. The communication dated 10.06.2013, 24.09.2015, 13.05.2016 and 06.02.2017 have been produced on record. It is contended that the respondent No.2 could only respond to these communications only on 07.12.2018 rejecting the request of the petitioner and, therefore, the petitioner is seeking certiorari and other such writ or direction for quashing and setting aside the impugned communication dated 07.12.2018 issued by the respondent No.2 and then issuing writ of mandamus to direct respondent No.2 to correct the date of granting approval to the services of petitioner as an Assistant Teacher from 24.06.1996 instead of 14.06.1999.

2 Affidavit-in-reply has been filed on behalf of respondent No.2 by one Satyajit Vitthal Machchindra, Superintendent Class-II in the office of Education Officer (Secondary), Zilla Parishad, Ahmednagar. It has been stated that the petitioner is seeking correction in the date of approval to his services relying upon the Judgment and the order passed by School Tribunal, Solapur. He states that he was initially appointed in the another school viz. Keshav Govind Vidyalaya, Belapur (Kh) on 22.06.1996. Though the

petitioner was appointed by the Management of the same school, there was no clear approved vacant post as per the staffing pattern. After the order of reinstatement, the Management had forwarded the proposal seeking approval to the appointment of the petitioner. Taking into consideration the vacancy, the post in all 11 schools run by the said Management, the approval has been granted by the respondent No.2. It has been reiterated that as there was no clear vacancy in the school, wherein he was appointed in 1996, the approval could not have been so granted.

3 Heard learned Advocate Mr. R.B. Temak for petitioner, learned AGP Mrs. M.A. Deshpande for respondent Nos.1 and 2 and learned Advocate Mr. V.P. Patil for respondent Nos.3 and 4.

4 At the outset, it is to be noted that following is the operative order passed in Appeal No.65/2003 by the learned School Tribunal, Pune Region, Solapur on 21.04.2006.

“1 The appeal is allowed as under :

2 The impugned order of termination dated 13.06.2002 is hereby quashed and set aside.

3 The appellant be reinstated forthwith in the service with continuity of service and is entitled to receive 50% back wages with all consequential benefits from the respondent No.1 and 2 alone.

4 The respondents are directed to pay 50% back wages to the

appellant until reinstatement and thereafter as per rules and regulations of the M.E.P.S. Act.

5 The appellant's services shall be deemed to be approved and confirmed as Assistant Teacher on completion of probation period.

6 The respondent shall comply with the aforesaid order within 35 days. On their failure, the respondent No.3 – E.O. shall deduct to the Management and same be paid directed to the appellant.

7 Inform the parties accordingly.”

The learned Advocate appearing for petitioner by pointing out the above said order as well as the observations from the said Judgment submitted that there was no dispute as regards the date of appointment of the petitioner and, therefore, there was no ambiguity in the mind of the learned Presiding Officer. Therefore, there is no question of getting the said order corrected to state as to from which date the approval should be granted. When the order that was passed was clear and unambiguous, a different interpretation ought not to have been made by the respondent No.2. He relied on the decision in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, (2013) 10 SCC 324, in which the word “reinstatement” has been explained. It was also observed that *in case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule*. Therefore, in this case such relief has been granted by the School Tribunal, which could not have been differently interpreted by the respondent No.2 – Authority. He has tendered

the copy of appointment letter of the petitioner dated 22.06.1996 and then it was also stated that continuous representations have been made to the respondent No.2, however, it has been ultimately responded on 07.12.2018. Hence, the petition deserves to be allowed.

5 Per contra, the learned AGP submitted that the appointment letter would show that he was appointed in the school by name Keshav Govind Vidyalaya, Belapur (Kh) from the respondent No.3 – Institute. The consolidated chart of the 11 schools run by the institution, which has been given by the president of the said society, has been produced at Exh.‘R-1’ and it can be seen from the same that there was no vacancy with Keshav Govind Vidyalaya, Belapur (Kh). Rather three posts appear to have been filled extra than the sanctioned strength and, therefore, only after the clear vacancy arose, the approval has been granted from that date.

6 At the outset, it can be seen from the Judgment of the School Tribunal that the school authorities, whose action of terminating the petitioner was challenged, had not produced appropriate record before the Tribunal. It may be the result of hand in glove of the petitioner with the society. The non production of the material documents has been considered on the principle of adverse inference. Now, we need not deliberate as to

whether there was any ambiguity in the order passed by the School Tribunal or it was clear enough indicating what could be the date of approval. No doubt, the normal course ought to have been followed, however, it is also to be noted at the same time that by Judgment and order dated 21.04.2006 the petitioner was reinstated and it was directed that his services shall be deemed to be approved and confirmed as Assistant Teacher on completion of probation period and, thereafter, the approval order was passed by the respondent No.2 on 11.02.2008, in which it was specifically stated that the date of appointment is 14.06.1999. The petitioner has objection for this date and according to him, his date of appointment i.e. 22.06.1996 ought to have been stated as the date of his appointment in the said order dated 11.02.2008. The petitioner had not taken immediate steps to get the said date corrected. From the bunch of documents those have been produced by the petitioner it could be seen that around 03.06.2013 there was some action taken by the petitioner which has been referred in the communications dated 10.06.2013, 24.09.2015, 13.05.2016, 06.02.2017 as appeal. The petitioner has not produced copy of that appeal and it has also not been clarified by the learned Advocate for the petitioner as to under which provisions of law the said appeal was filed. The impugned order dated 07.12.2018 is not giving an impression that it is the decision in appeal. That was referred in the above said communications. Even if we take the facts as it is, it appears that the

petitioner, for the first time raised grievance about the alleged wrong date in the the approval order dated 11.02.2008 around 03.06.2013. Definitely, this action on the part of the petitioner suffers from delay and latches. Thereafter also only the communication has been made by respondent No.3 to the respondent No.2. There appears to be no active step taken by the petitioner, when his representation or appeal was not being decided by the respondent No.2 within reasonable time. The petitioner could have come to this Court immediately, but he waited till impugned communication dated 07.12.2018.

7 The learned Advocate for the petitioner submits that the petitioner cannot move the School Tribunal for any correction and that can be done only under the writ jurisdiction of this Court. However, as aforesaid, in service matters if the employee does not take swift actions, then, this Court would be slow in exercising its writ jurisdiction. When the order dated 21.04.2006 was in favour of the petitioner; yet, as per petitioner's contention, the approval order dated 11.02.2008 had shown a wrong date. The petition that has been filed on 27.02.2019 suffers from delay and latches. Hence, the writ petition stands dismissed. No order as to costs.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)