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

904 WRIT PETITION NO.3082 OF 2011
WITH
CIVIL APPLICATION NO.971 OF 2020

Ravindra s/o Arun Kshirsagar,
Age: 37 years, Occu: Service,
R/o. At: Undangaon,
Tq. Sillod, Dist. Aurangabad

...PETITIONER

VERSUS

1. The Secretary,
Savitribai Phulle Shikshan Mandal,
At: Undangaon, Tq. Sillod,
Dist. Aurangabad

2. The Head Master,
Savitribai Phule Primary School,
at Undangaon,
Tq. Sillod, Dist. Aurangabad

3. The Education Officer(Primary),
Zilla Parishad,
Tq. and Dist. Aurangabad

...RESPONDENTS

...

Mr S. R. Kolhare, Advocate for petitioner;
Mr M. M. Joshi, Advocate for respondent Nos.1 & 2
Mr V. C. Patil, Advocate h/f Mr U. B. Bondar, Advocate for
respondent No.3

CORAM : RAVINDRA V. GHUGE, J

DATE : 8th March, 2022

ORAL JUDGMENT:

1. This petition was admitted by an order dated 16/11/2011 and the hearing was expedited. I considered the extensive submissions of the learned Advocates for the respective parties.

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2. By this petition, the petitioner has put forth prayer clauses (B) and (C), which read as under :

“B. By writ of certiorary or any other appropriate writ or direction like nature or order, the Judgment and order dated 7th March 2011, passed in Appeal No.59 of 2002 passed by the Learned Presiding Officer, School Tribunal Aurangabad and the termination order dated 30-04-2001, passed by the Respondent No.2, may kindly be quashed and set-aside and petitioner may be reinstated to his original post of Assistant Teacher by giving all consequential benefits including salary of back wages.

C. Pending hearing and final disposal of this writ petition, the effect, operation, implementation, execution of the impugned orders passed by the Learned Presiding Officer, School Tribunal Aurangabad, in appeal No.59 of 2002, and the Termination order dated 30-04-2001, passed by the Respondent No. 2, may kindly be stayed.”

3. The petitioner is aggrieved by the impugned order dated 07/03/2011, delivered by the School Tribunal, Aurangabad, by which, his Appeal No. 59/2002 has been dismissed.
4. The contention of the learned Advocate appearing on behalf of the petitioner can be summarized as under :

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(a) There was an approval by the Education Officer to carry out recruitment (which is an incorrect statement).

(b) An Advertisement dated 28/05/1998 was published in Daily 'Samna', which indicates that five permanent posts were advertised;

(c) The petitioner was appointed on probation and has completed three years (an incorrect statement).

(d) The petitioner has been terminated on 30/04/2001, illegally.

(e) In the earlier round before this Court in Writ Petition No.3820/2003, by judgment dated 24/06/2009, this Court has decided the issue that the petitioner was not appointed against a reserved post (an incorrect statement).

(f) As the petitioner has completed three years, he is deemed to be permanent in the light of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977.

5. The learned Advocate for the Management has relied upon the written statement filed before the Tribunal dated 06/08/2003, wherein a specific stand has been taken that the petitioner was appointed purely as a temporary for one year against a reserved

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category post. The copy of the approval granted by the Zilla Parishad, Competent Authority, indicates that the appointment was only for one year. The petitioner was continued in the next year as well as in the third year, since a candidate belonging to reserved category was not available. He then relies upon the affidavit-in-reply filed in this proceeding and highlights the reply of the Education Officer, Zilla Parishad, vide paragraph No.20 and further contends that the Education Officer himself has recorded that the appointment of the petitioner was against a reserved post, that too, for a temporary period. The approval granted was only for one year and though the Management continued the petitioner, as a candidate from the reserved category was not available, for the second year and the third year, the Education Officer has not granted any approval.

6. Considering the above, several questions crop up and the answer lies in the appointment order of the petitioner as well as the approval granted by the Education Officer only for one year. The advertisement dated 28/05/1998 indicates that five positions are to be filled in. One seat is reserved for the Scheduled Castes category, one for the Scheduled Tribes category, one for the VJNT category and two for the Open category. The appointment

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order of the petitioner dated 09/06/1998 indicates that he has been appointed as a temporary for one year from 11/06/1998 till 30/04/1999. He was not appointed on probation. The appointment order does not indicate that he was appointed against a reserved category. However, the approval granted by the Education Officer indicates that the petitioner was treated as appointed against a reserved category since the candidate belonging to the NTC category was not available. The law mandates that, if a candidate from a particular reserved category is not available and a person from the open category is appointed against such category, the Management has to re-advertise the post every year for a period of five years until a candidate belonging to the category is found eligible and appointed. If after five years, such a candidate is not available, the post is to be allotted to the next category as per the roster.

7. From the record, it does not appear that the Management has re-advertised the post for the academic year 1999-2000. It is probably for this reason that, the Management did not send the proposal of the petitioner for approval for the second year. The same story was repeated in the third year.

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8. No doubt, the petitioner cannot be wholly blamed for his misfortune. The Management should have behaved as a model employer and should have followed the Rules. At the same time, the petitioner should have been alert when he first received the appointment order indicating that he is appointed on a temporary post for one year. He should have been diligent to know as to what was the status of his approval. When he was appointed for the next year, he admits that he was not given an appointment order. Had he been diligent, he could have initiated steps at least for securing an appointment order. The Management has continued him, de hors the Rules. In such circumstances, Section 5 (2) of the M.E.P.S. Act cannot be brought into play and though the petitioner has completed three years, he cannot be granted any relief.

9. It is quite apparent that the Management exploited the services of the petitioner by selecting him as a temporary, without mentioning in the appointment order that he was selected against a reserved category. The proposal sent for approval contains such condition and therefore, the Education Officer granted approval only for one year. For the second academic year, the Management did not follow the procedure of advertising the post once again.

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The learned Advocate for the Management clarifies that the advertisement was not published for the academic year 1999-2000, but one advertisement was published for the academic year 2000-2001. However an appointment order was not issued to the petitioner for the second year.

10. He further submits that for the third academic year, an advertisement was published in Daily 'Samna' and the petitioner was given an appointment for one year as a 'Shikshan Sevak' vide order dated 10/07/2000 till 30/04/2001. He further clarifies that the said appointment as a 'Shikshan Sevak' was also against a reserved category. This indicates that the petitioner was not appointed as an 'Assistant Teacher' in the third year and he accepted the appointment order as a 'Shikshan Sevak' for one year against a reserved category, for the academic year 2000-2001.

11. In view of the above, this petition is disposed off.

12. However, considering the irregularities committed by the respondent/Management, I deem it appropriate to invoke the powers of the Court under Section 11(2)(e) and order the Management to pay six month's gross salary to the petitioner as

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compensation for the loss of employment and for the irregularities committed, due to which, probably the entire career of the petitioner has been jeopardized. Such amount shall be paid to the petitioner, on or before 30/04/2022.

13. Rule is discharged.

14. Pending civil application would not survive and the same stands disposed off.

(RAVINDRA V. GHUGE, J.)

sjk