

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4690 OF 2013

Eknath Dattatraya Sontakke
Age- 32 years, Occ- At present Nil,
R/o. Brahmanwada, Nanded,
District- Nanded.

PETITIONER

VERSUS

1. Jagdamba Shikshan Sanstha, Pathard,
Tq. & Dist. Nanded,
Through its Secretary.
2. Sanjay Gandhi High School,
Punegaon, Tq. & Dist. Nanded,
Through its Head Master.
3. Education Officer (Secondary),
Zilla Parishad, Nanded,
Dist. Nanded.
4. Shivram Gangaram Kadam
Age-32 years, Occ- At Present Nil,
R/o. Brahamanwadi, Nanded,
Dist. Nanded.
5. State of Maharashtra,
School Education Dept.,
Mantralaya, Mumbai.

RESPONDENTS

ALONG WITH
WRIT PETITION NO. 4694 OF 2013

Anand Madhav Dhage
Age- 39 years, Occ- At present Nil,
R/o. Mahate, Tq. Mukhed,
District- Nanded.

PETITIONER

VERSUS

1. Jagdamba Shikshan Sanstha, Pathard,
Tq. & Dist. Nanded,
Through its Secretary.
2. Sanjay Gandhi High School,
Punegaon, Tq. & Dist. Nanded,
Through its Head Master.
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Zilla Parishad, Nanded,
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4. Shivram Gangaram Kadam
Age-32 years, Occ- At Present Nil,
R/o. Brahamanwadi, Nanded,
Dist. Nanded.
5. State of Maharashtra,
School Education Dept.,
Mantralaya, Mumbai.

RESPONDENTS

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Mr. R.J. Godbole, Advocate for the petitioner.
Mr. S.H. Panchal, Advocate for Respondent No. 1.
Mr. V.D. Gunale, Advocate for Respondents No. 2 to 4.
Mrs. G.L. Deshpande, AGP for respondent No. 5 - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th JUNE, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.
2. Since similar question of law and fact is involved in the petitions, they were heard together and are being decided by this common judgment.

3. The petitioners were respectively educated SSC, CTC and B.A. B.P.E.d, appointed as craft teacher and assistant teacher for a period of three years in respondent No. 2/school, vide appointment order dated 01.09.2002 and 30.08.2002. Their services came to be terminated vide termination order dated 12.09.2005. The petitioners challenged their termination order by approaching to the Grievance Committee by filing an appeal. Their appeal came to be allowed by the Grievance Committee. However, as per the decision of the Hon'ble Supreme Court the Grievance Committee has no jurisdiction to entertain the appeals challenging termination and accordingly the petitioners approached School Tribunal challenging their termination orders. The School Tribunal has dismissed their appeals. Hence, present petitions.

4. Heard the learned advocate for the petitioners, learned advocate for respondents and learned Assistant Government Pleader for respondent/State.

5. The learned advocate for the petitioners has assailed the impugned judgments/orders contending that the Tribunal has committed serious error in coming to a conclusion that there was

no advertisement issued at the time of appointment of the petitioners as teachers, the management has not passed any resolution, original muster rolls were not produced and there was no approval granted to the services of the petitioners. The Tribunal further erred in holding that since the divisions were closed there were no posts available.

6. By relying on *Nita Ramesh Danane Vs. Dombivali Mitra Mandal and Ors.*, [2009 (1) Mh.L.J. 796], he would submit that for filling up post from open category no advertisement is necessary. Further by relying on *Hind Vidya Bhavan, Mumbai & Ors. Vs. Presiding Officer, School Tribunal, Mumbai & Ors.*, [2007 (6), M.h.L.J. 563], he submits that approval is not necessary for valid appointment. He further submits that the petitioners produced on record photo copies of muster rolls. The head master being custodian of record was duty bound to produce original muster rolls and since original are not produced by the head master and the management, adverse inference ought to have been drawn by the School Tribunal against the management. He further submits that since the petitioners have produced on record their appointment orders and experience certificates, the Tribunal has erred in holding that the petitioners

failed to prove their appointments and that they served from alleged date of joining till the alleged date of termination. According to him, the petitioners were appointed as Shikshan Sevak by following due procedure of law and since the petitioners were continued in service for more than three years they have acquired deemed permanency. He therefore submits that, the impugned judgments and orders passed by the Tribunal are unsustainable in the facts of the present case.

7. On the other hand, learned advocates appearing for the respondent/management and head master submit that in the reply filed by the Education Officer before the Grievance Committee, he has specifically contended that no post of craft teacher or assistant teacher was available when the petitioners were allegedly appointed. The names of the petitioners are not mentioned in the staff approval of the relevant period. They further submit that in annual inspection report the names of the petitioners are not mentioned. The petitioners are closely related with the headmaster as Petitioner- Eknath Sontakke is son of the head master and Petitioner- Anand Dhage is son-in-law of the head master, therefore, in collusion with the head master, the petitioners have prepared documents to show that they were

appointed and served with the management. They further submit that there was no advertisement issued, no prior permission of Education Officer under rule 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 was sought before appointing the petitioners. According to them, there was no vacancy at the time when the petitioners claimed to have been appointed. They further submit that in the photo copies of muster rolls produced by the petitioners, names of the petitioners appear below the names of non teaching staff. This itself shows that the names of the petitioners are inserted subsequently in the photo copies. They supported the impugned judgments and orders and submit that petitions being devoid of merits liable to be dismissed. In support of their submissions they relied on Priyadarshni Education Trust and Ors. Vs. Ratis (Rafia) Bano, [2007(6), Mh.L.J. 667], Anna Manikrao Pethe Vs. Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati & Ors, [1997(4)LLN 443 (Bom)] and Division Bench (Coram:- Ravindra V. Ghuge And S.G. Mehare, JJ.) judgment in Arjun Gunderao Ghume Vs. The State of Maharashtra And Others, [Writ Petition No. 6367 of 2018].

8. The learned Assistant Government Pleader for respondent/State has supported the impugned judgments and submits that it is clear from the reply filed by the Education Officer before the Grievance Committee that there were no sanctioned posts available at the time when petitioners were appointed and the names of the petitioners are not there in the annual inspection report. Hence, she submits that no case is made out by the petitioners to warrant interference in the impugned judgments.

9. Heard at length. Perused the documents placed on record and the citations relied by both the sides.

10. It appears from the record that at the time of alleged appointments of the petitioners in the respondent/school the prescribed procedure is not followed. There appears substance in the contention of respondents that since the head master was father of Petitioner- Eknath Sontakke and father-in-law of Petitioner- Anand Dhage, documents were prepared to show that the petitioners were given appointment in respondent/school. Said submission is acceptable in view of the fact that the names of the petitioners appear at the bottom in the muster rolls

even below the names of non teaching staff. It is necessary to note here that at the time when the petitioners were appointed and when the matter is contested before the School Tribunal, head master was holding charge of Secretary also. In that view of the matter, it was possible for the petitioners to create documents to show that they were appointed and they served in respondent/school. Admittedly, no resolution passed by the management at the time of appointment of petitioners is placed on record. There is no approval to the services of the petitioners. The names of the petitioners do not appear in the annual inspection reports of the year 2002. In that view of the matter, the Tribunal is right in coming to a conclusion that the petitioners have failed to prove that they were appointed by the following due procedure of law and they have served with the respondent/school. The Tribunal is justified in coming to a conclusion that from the documents on record it seems probable that the termination orders were issued to the petitioner so as to show that they were employees of the respondent/school.

11. In *Nita Ramesh Danane* (supra), the learned Single Judge has held that, if the post is in open category there is no requirement for advertisement. There cannot be any dispute

about said proposition, however, in the facts of the present case since documents on record do not indicate that the petitioners were duly appointed by following due procedure, this citation is of no help to the petitioners.

12. In *Hind Vidya Bhavan, Mumbai* (supra), learned Single Judge of this Court has held that, even if appointments are not approved, the teachers are entitled to invoke jurisdiction of the School Tribunal by filing an appeal. This judgment is also of no help to the petitioners.

13. The ratio in *Priyadarshini Education Trust* (supra) and *Anna Manikrao Pethe* (supra) supports the case of the respondents.

14. For the aforesaid reasons, there is no merit in the challenged raised in both the petitions. The petitions are, therefore, dismissed with no order as to costs. Rule discharged.

[NITIN B. SURYAWANSHI, J.]