

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2535 OF 2019

Subhash Ganpat Mhase,
Age-39 years, Occu-Nil,
R/o At Post : Shilegaon,
Tal.Rahuri, Dist.Ahmednagar

-- PETITIONER

VERSUS

1. Shri Shivaji Shikshan Prasarak Mandal,
Through Secretary,
Shivaji Nagar, Tq.Rahuri, Dist.Ahmednagar,

2. The Head Master,
Sant Dnyaneshwar Vidyalaya,
Taklimiya, Taluka Rahuri,
Dist.Ahmednagar

3. The Education Officer (Secondary).
Zilla Parishad, Dist.Ahmednagar
Dist.Ahmednagar

-- RESPONDENTS

Mr.S.S.Bora, Advocate for the petitioner.
Mr.V.P.Patil, Advocate for respondent Nos. 1 and 2.
Mr.P.G.Borade, AGP for respondent No.3.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

ORAL JUDGMENT :

1. Heard the learned Advocate for the petitioner and learned Advocate for respondent Nos. 1 and 2 and the learned AGP for

respondent No.3 / the Education Officer (Secondary).

2. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

3. The petitioner is aggrieved by an order passed by the School Tribunal refusing to entertain his appeal challenging the order of termination issued to him by Management on 07/10/2016. The learned Advocate for the petitioner would submit that the petitioner came to be appointed pursuant to an advertisement issued in a widely circulated daily inviting applications to various posts in Primary, Secondary and Higher Secondary schools run by the respondent No.1/Management. The advertisement specified the qualifications to be possessed by the candidates and the advertisement clarified the posts, which were reserved in the advertisement. Further the advertisement specifically mention that it has been issued with due permission from the Education Officer, Secondary and the Deputy Director of Education, Pune.

4. Pursuant to the advertisement, since the petitioner was eligible to apply, he applied for the post of "Shikshan Sevak" and came to be

selected and on the resolution being passed by the Management, was issued appointment order on the post of "Shikshan Sevak". He joined the said post on probation for the period of 3 years i.e. from 08/12/2014 to 07/12/2017.

5. The grievance of the petitioner is that the respondent/Management failed to forward his proposal to the Education Officer and this resulted in putting an end to his service by an order dated 07/10/2016 on the ground that since the approval is not obtained to his appointment from the Education Officer, his services are terminated w.e.f. 08/10/2016.

6. The learned Advocate for the petitioner has placed on record a office note dated 06/10/2016 in respect of the proposals of the Shikshan Sevaks in the Secondary Department, as far as the petitioner is concerned, who came to be appointed on 08/12/2014, on the post of "Shikshan Sevak", it is recorded that the proposal for approval was not forwarded to the Education Officer (Secondary), Zilla Parishad.

Relying upon the aforesaid document, the learned counsel would submit that there is a perversity in the order of termination, which

record that the termination order is issued since the Education Officer has refused to grant approval to his appointment, whereas the office note clearly record that no proposal of the petitioner was forwarded to the Education Officer seeking approval. The termination order is, therefore, clamped as being passed on non existent grounds and hence illegal.

Though the petitioner approached the School Tribunal with the same ground, he was not successful and the School Tribunal rejected his appeal.

7. The learned Advocate for the petitioner placed reliance upon a decision of this Court delivered in group of writ petitions decided on 02/12/2021 and 12/08/2021 in respect of the employees of the same Management, who came to be appointed on the post of Shikshan Sevak in Primary, Secondary and Higher Secondary schools pursuant to the advertisement and in the said case, the services of the employees/teachers came to be terminated on the very same ground that the approval is not received from the Education Officer.

The writ petitions were contested by the Management and on consideration of the position of Law clearly, the learned Single Judges

of this Court (Coram : N.B.Suryawanshi, J.) and (Coram : R.G.Avachat, J.) expressed their agreement with the order passed in WP No.13485/2016, where the direction was issued to grant approval to the appointment of the petitioners from a particular date, by recording that the approval cannot be refused if the recruitment process was commenced prior to imposition of the ban or where the appointments are made to fill up the vacancies in English, Mathematics and Science or whether the recruitment is made to fulfill the backlog of reserved category.

However, in the present case, there is no decision taken by the Education Officer on the proposal of approval and the learned Advocate for the petitioner is justified in submitting that that reasoning is manifestly erroneous since in fact the proposal of the petitioner itself was never forwarded to the Education Officer.

8. In these circumstances, the impugned order cannot be sustained though on a slightly different reasoning that came to be recorded in the judgments dated 02/12/2021 and 12/08/2021. By setting aside the order of termination though in my considered opinion, the petitioner is entitled for a similar relief as was granted in the said case.

8. In the wake of the above, Rule is made absolute in the above terms and the following order is passed :-

1. Writ petition No.2535/2019 is allowed.
2. The impugned order passed by the learned School Tribunal in Appeal No.62/2016 dated 27/04/2018 is hereby quashed and set aside.
3. The impugned termination order dated 07/10/2016 is hereby set aside.
4. The petitioner is reinstated in service as "Shikshan Sevak" so as to complete the remaining tenure of his post.
5. On reinstatement of the petitioner, the respondent/Management shall forward the proposal of his approval within a period of two months to the Education Officer.
6. As far as the claim of backwages is concerned, the Education Officer, after hearing the petitioner and the respondent/Management shall pass appropriate orders about his entitlement about back wages, after verifying the relevant aspect whether some other teacher was appointed in place of the petitioner to teach the subject and also take into account whether the petitioner was employed at some other place during the interregnum.

(BHARATI H. DANGRE, J.)