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

WRIT PETITION NO.12478 OF 2022

**PRATAP HANAMANTRAO PATADE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
SECRETARY AND OTHERS**

....

Mr B. B. Bhise, Advocate for petitioner;
Mr S. G. Karlekar, A.G.P. for respondent Nos.1 to 4
Mr Pratik Kothari, Advocate for respondent No.5

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 13th December, 2022

PER COURT:

1. The petitioner has put forth prayer clauses (A) and (B),
which read as under :-

“A. By Writ of Mandamus or any other appropriate Writ, Order or Direction in the like nature, Quash and Set aside Impugned Order dated 02.06.2022 passed by Respondent No. 3- Deputy Director of Education, Latur;

B. By Writ of Mandamus or any other appropriate Writ, Order or Direction in the like nature, direct Respondent No. 3-Deputy Director of Education, Latur to grant approval to the transfer of the petitioner as Assistant Teachers on 100% aided post in Respondent No. 5-College in regular pay scale from 17.07.2013 and accordingly release arrears of salary of the petitioner for the period from 17.07.2013 to 02.04.2015.”

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2. Issue notice to the respondents, returnable forthwith. The learned A.G.P. waives service of notice on behalf of respondent Nos.1 to 4. Mr Kothari, the learned Advocate waives service of notice on behalf of respondent No.5.

3. The learned Advocate for the petitioner relies upon the judgment delivered by this Court, dated 04/07/2019, in Writ Petition No.1493/2018, filed by Suryakant Janardan Muge and others along with Writ Petition No.6127/2016, filed by Nalini Uttamsingh Patil and others. He also relies upon the order passed by this Court, dated 06/10/2022, in Writ Petition No.7714/2022, filed by Yogesh Shivaji Khule Vs. State of Maharashtra and others.

4. Issue is as regards the impugned order dated 02/06/2022, by which, the Deputy Director of Education, Latur, has concluded that the petitioner cannot be termed to be a probationer from 17/07/2010. A post that fell vacant on 02/04/2012, was occupied by him, and therefore, he is termed as being on probation w.e.f. 02/04/2012.

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5. We have considered the strenuous submissions of the learned Advocate for the petitioner, the learned A.G.P. as well as the learned Advocate appearing on behalf of respondent No.5.

6. It calls for no debate that, the selection and appointment of the candidate has to be in pursuance to an advertisement, which is published by following the due process of law and cannot be termed as being an irregular or an illegal advertisement. We have perused the advertisement placed at page No.24 of the petition paper book. The petitioner contends that, it was published in daily 'Punya Nagari', Latur. The petitioner is a teacher in Mathematics. Sr. No.4 indicates 01 'Part Time' post available for the subject of Mathematics. It is not shown to be a 'Full Time Sanctioned Post'. The petitioner was selected on the said post vide appointment order dated 16/07/2010, which is after the interviews that were conducted on 15/07/2010. We have perused the appointment order, which is as vague as could be. At Clause 2, there are blank spaces and it indicates that appointment of the petitioner is purely temporary for a period of probation 'from 17/07/2010 till _____' (the date is not mentioned). It is also stated that, after the expiry of the period, his services stand terminated. Clause 3 is equally vague, which says that

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‘appointment is on probation for a period of one year/two year’. Clause 9 also leaves blank space insofar as reservation. The petitioner joined on 17/07/2010.

7. There is no dispute and the learned Advocate for the Management confirms that, a permanent post fell vacant on account of the superannuation of Shri. J. V. Nikam on 31/03/2012. It is also conceded that the said post was not advertised and there was no fresh selection procedure that was followed. The petitioner who was selected as a ‘Part Time Teacher’, was placed in the vacancy that was created on account of the superannuation of Shri. J. V. Nikam.

8. We have our own doubts, as regards such selection and appointment. A ‘Part Time Teacher’ appointed in the fashion as noted above, being placed on a permanent vacant post without any selection or appointment, raises many questions. The learned Advocate for the petitioner as well as the learned Advocate for the Management, are unable to state, as to whether, a fresh appointment order was issued to the petitioner, to place him in the position of Shri. J. V. Nikam, who superannuated from a permanent post. The learned Advocate for the petitioner relies

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upon an order dated 02/04/2012, issued by Shri. Ram Honmane, Deputy Director, Divisional Education Department, Latur, granting approval to the petitioner as a 'Full Time Teacher'. We are surprised as to how such order can be passed, when the advertisement indicates that post was 'Part time'. The appointment order of the petitioner is absolutely haphazard and vague and the Deputy Director, Divisional Education Department converted the said post into 'Full Time Post' and granted approval, de-hors the rules. We do not approve this order.

9. Nevertheless, the petitioner has worked in place of Shri. Nikam from 02/04/2012. That was a 'Full Time Permanent Post'. Even if, the above illegalities are to be ignored, the petitioner has worked on a permanent post from 02/04/2012 on-wards. Considering this aspect, we do not find that the impugned order dated 02/06/2022, recording the service of the petitioner as Probationer on a 'Permanent Vacant Post' from 02/04/2012, could be faulted.

10. This petition, therefore, is dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

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