

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 4761 OF 2021
with
INTERIM APPLICATION (ST.) NO. 21976 OF 2021***

Mallinath Basavanappa Samane ... Petitioner

V/s.

State of Maharashtra and Ors. ... Respondents

Mr. S.G. Kudle for the Petitioner

Mr. M.R. Deshpande for the Respondent Nos. 3 and 4

Ms. S.S. Bhende, AGP for the Respondent – State

***CORAM : NITIN JAMDAR &
AMIT BORKAR, JJ.***

***DATE : 08 FEBRUARY 2022
(Through Video Conferencing)***

P.C. :-

Heard the learned Counsel for the parties. Taken up for disposal by consent of parties.

2. The Petitioner is an employee of the Respondent No.3 – Trust, who runs a School – Respondent No.4. The dispute before us is whether the Petitioner, when he was appointed on 13 June 2005, was appointed on the post of Peon or on the post of Kamathi.

3. As per the impugned communication issued by the Respondent.2, there is no record of the Petitioner being appointed as a Peon, therefore approval is granted to the post of Kamathi. It is the case of the Petitioner that the Petitioner was specifically appointed as a Peon and he has worked as a Peon and therefore, approval should be on the post of Peon. The learned Counsel for the Petitioner submitted that the Petitioner was not issued an appointment order and was made to work as a Peon. According to the learned Counsel for the Respondent – Management, the Petitioner was appointed by an appointment order dated 8 June 2007 as a Kamathi and therefore, the approval was rightly granted as Kamathi by order dated 20 May 2008. This is countered by the Petitioner contending that the order dated 8 June 2007 stating that the Petitioner was appointed on the post of Kamathi from the academic year 2007-2008 was never served on the Petitioner.

4. We had adjourned the Petition to enable the Respondent – Management to place the proof of order dated 8 June 2007 being served on the Petitioner on record. The Respondent – Management annexed a photocopy of the order to the affidavit. This order does not show any signature of the Petitioner. Therefore, the issue as to what was the nature of appointment of the Petitioner has become a seriously disputed question of fact. According to us, it would be appropriate that the Respondent No.2 is directed to hold this factual enquiry.

5. The Respondent No.2 will have to call for record from the Respondent No.3 – Management to ascertain the real nature of appointment of the Petitioner and the work performed.

6. We direct the Respondent No.2 to call the Petitioner and the representative of the Respondent No.3 with necessary documents and ascertain and decide as to whether the Petitioner was appointed and worked as a Peon or Kamathi and depending upon the outcome of this enquiry, pass a suitable order regarding the approval. The Petitioner and the representative of the Respondent No.3 – Management will appear before the Respondent No.2 on 21 February 2022. Thereupon, the Respondent No.2 will assign a suitable date holding for the enquiry as above, and subject to other pressing public commitments, make an endeavour to take a decision within a period of eight weeks and inform the parties regarding the outcome. We make it clear that we have only referred to the rival contentions and should not be construed as we have opined on merits of the rival pleadings.

7. The Writ Petition is disposed of in the above terms. The Interim Application stands disposed of accordingly.

AMIT BORKAR, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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