

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1074/2020

Hiteshkumar Madhukar Khandare,
Age – 28 years, Occ – Service,
R/o Madhan, Tq. Chandur – Bazar, Dist. Amravati.

PETITIONER

.....VERSUS.....

1. Education Officer (Sec),
Zilla Parishad, Camp, Amravati,
Tq. and Dist. Amravati.
2. Sarodaya Pragati Secondary School Karajgaon
(Gandhighar), through its Head-Master at Karajgaon
(Gandhighar), Tq. Warud, Dist. Amravati.

RESPONDENTS

Shri P.S. Patil, counsel for the petitioner.
Shri N.R. Patil, Assistant Government Pleader for the respondent no.1.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : 25TH JULY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The father of the petitioner was serving at the respondent no.2-Secondary School. He died in harness on 28.05.2006. The petitioner who is his elder son sought appointment on compassionate basis by moving an application in that regard. The School through its Management issued a communication to the Education Officer (Secondary) dated 26.10.2016 expressing willingness to appoint the petitioner on compassionate basis. The Education Officer (Secondary)

accordingly granted permission to appointment the petitioner on compassionate basis on 29.10.2016. Thereafter by passing a resolution on 10.11.2016 the Management resolved to appoint the petitioner on the post of Junior Clerk on compassionate basis. The order of appointment was accordingly issued on 10.11.2016. The Management sought approval to such appointment by moving an application on 15.02.2017. This was followed by a reminder. Since the aforesaid proposal was not being decided the petitioner had approached this Court in Writ Petition No.675 of 2019. On 19.07.2019 the Education Officer (Secondary) was directed to decide the aforesaid proposal within a period of four weeks. Accordingly on 12.12.2019 the Education Officer (Secondary) decided the said proposal and granted approval to the petitioner's appointment from 28.01.2019. Being aggrieved by the fact that such approval was granted from 28.01.2019 and not from the date of initial appointment which was 17.11.2016, the petitioner has challenged the same in the present writ petition.

3. The learned counsel for the petitioner submitted that there was no reason for the Education Officer (Secondary) to grant approval to the appointment of the petitioner from 28.01.2019. The petitioner having been appointed after seeking permission of the Education Officer (Secondary) and such appointment having been made on 17.11.2016 it

was not open for the Education Officer (Secondary) to rely upon a subsequent Government Resolution dated 28.01.2019 and approve the petitioner's appointment. Placing reliance on the decision in **Writ Petition No.4219 of 2018** [*Smt.Yogita Shivsing Nikam Versus The State of Maharashtra & Others*] decided at the Aurangabad Bench on 11.08.2021 it was submitted that failure to finalize the staffing pattern could not be treated to be a reason to grant approval from the date of that Government Resolution. It was thus submitted that the impugned order of approval ought to be modified by indicating that the approval was granted from 17.11.2016.

4. The learned Assistant Government Pleader for the respondent no.1 supported the impugned order and relied upon the affidavit-in-reply. According to him *vide* Government Resolution dated 28.01.2019 a new policy was introduced prescribing for the staffing pattern of non-teaching posts. It was for that reason that approval was granted from the date of the Government Resolution. He therefore submitted that no interference with the impugned order was called for.

5. Having heard the learned counsel for the parties and having perused the relevant documents, we do not find any justification on the part of the Education Officer (Secondary) to grant approval to the petitioner's appointment from 28.01.2019. The petitioner was issued the

order of appointment after the Education Officer (Secondary) on 29.10.2016 permitted the Management to do so. The petitioner has thereafter been appointed on 10.11.2016. The proposal seeking approval was moved on 15.02.2017 and its consideration was delayed for no justifiable reason. Merely because the Government Resolution dated 28.01.2019 was issued and the order of approval was passed thereafter on 12.12.2019, the same cannot be the reason to grant such approval from 28.01.2019. The non-finalization of the staffing pattern or the ban on recruitment are the reasons which this Court has found untenable in various writ petitions. This position has been reiterated in the decision in *Yogita Shivsing Nikam* (supra). We therefore find that there is hardly any justifiable reason to deny approval to the petitioner's appointment from 17.11.2016 and grant it from 28.01.2019. It is also to be noted that the period of probation of three years was completed on 16.11.2019 and therefore again requiring the petitioner to remain on probation from 28.01.2019 is also unjustified.

6. For aforesaid reasons, the following order is passed:-
 - I. The communication dated 12.12.2019 is set aside.
 - II. It is held that the petitioner's appointment as Junior Clerk ought to be approved from 17.11.2016 and not from 28.01.2019. The petitioner would be entitled for all consequential benefits flowing from grant of approval from 17.11.2016.

7. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE