

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1554/2018

1. Hinganghat Shikshan Sanstha,
Hinganghat (Regd. No.361/86,
PTR No.F-833 (W), through its
President, Tah. Hinganghat,
Dist. Wardha.

2. Adarsha Vidyalaya, Sakhara,
Tah. Samudrapur, Dist. Wardha,
through it's Head Master.

... Petitioners

- Versus -

1. State of Maharashtra,
through it's Secretary, Department of
School Education and Sports, Madam
Cama Road, Hutatma Rajguru Chowk,
Mantralaya Extension Bhavan,
Mumbai.

2. Education Officer (Secondary),
Zilla Parishad, Wardha.

3. Prashant Pandurangji Ujawane,
aged about 35 Yrs., Occ. Service,
R/o Netaji Ward, Hinganghat,
Tah. Hinganghat, Dist. Wardha.

... Respondents

Mr. A.D. Mohgaonkar, Advocate for the petitioners.
Mr. M.J. Khan, A.G.P. for respondent Nos.1 and 2.
Ms Ramma V. Kukday, Advocate for respondent No.3.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 4.7.2022

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. One post of Junior Clerk fell vacant in the school run by petitioner No.1 w.e.f. 1.4.2013 following retirement of one Clerk Shri Arun Thakre on attaining age of superannuation. By the resolution passed on 28.9.2012 by the school management, it was decided to fill up the vacancy of a Junior Clerk and so the process for filling up the vacancy was initiated. As a first step towards it, the school management sent a letter dated 8.4.2013 to the

Education Officer requesting him to grant the permission for filling up the post. There was no response from the Education Officer. Second communication was made by the school management on 12.8.2013 making the similar request. There was no response from the Education Officer. Third communication was sent by the school management by the communication dated 3.1.2014 again requesting him to grant his permission to fill up the post. There was no response from the Education Officer. Not giving up, the school management, yet again sent another communication to the Education Officer dated 11.3.2014 making the same request. There was no response from the Education Officer. The school management even then continued with its efforts to seek approval. The Deputy Director, Education even wrote a letter to Additional Chief Secretary, In-charge School Education of State of Maharashtra and sought necessary directions in the matter. By this letter, the Deputy Director had made his recommendation for granting prior permission for filling up the post of a Junior Clerk. The

Additional Secretary by his order dated 31 May 2014 responded and directed that the appropriate decision be taken keeping in view the provisions made in Government Resolution dated 23.10.2013. The Education Officer, however, did not take any steps. Respondent No.3 was, therefore, required to approach this Court by filing a writ petition seeking directions to the Education Officer. In his petition, being Writ Petition No.4594/2015, by the order passed on 4 April 2016 this Court directed the Education Officer to take an appropriate decision after hearing the petitioner (respondent No.3 herein) and the school management. Thereafter, by the impugned decision dated 12.9.2016, the Education Officer refused to grant permission to the appointment of respondent No.3 as a Junior Clerk.

3. While the efforts of the management to obtain permission of the Education Officer for filling up the post of a Junior Clerk were going and as no response whatsoever was coming from the Education Officer, the school management had by following

proper procedure except prior permission of the Education Officer, filled up the post of a Junior Clerk and had appointed respondent No.3 on that post vide it's letter dated 26.5.2014.

4. Now, the school management is before this Court contending that the impugned order is illegal.

5. Mr. Mohgaonkar, learned counsel for the petitioners submits that the impugned order gives reason of constitution of a committee for finalizing the staffing pattern vide Government Resolution dated 12.2.2015 and the committee having not taken any decision but, the reason so stated cannot be applied to the appointment made by the management. He submits that the appointment of respondent No.3 has been made at a time when the staffing pattern was already approved as per Government Resolution dated 23.10.2013. He further points out that it was this Government Resolution which was directed to be considered by the Education Officer while taking his decision about the grant

of approval of appointment of respondent No.3 by the school management.

6. Mr. Khan, learned A.G.P. submits that appointment of respondent No.3 is illegal as it has been made in violation of the Government Resolution dated 12.2.2015 which had directed to maintain *status quo* in the matter of seeking appointments to the vacant post pending decision of the committee constituted for finalization of new staffing pattern. He also submits that as per the Government Resolution dated 28.1.2019, only those appointments which were made before 28.1.2019 with proper permission having been granted to make those appointments could be approved by the Education Officer and in the present case, no prior permission was granted by the Education Officer for filling up the vacant post. He also submits that it was necessary for the management to have considered the aspect of appointing surplus teachers in the vacancy which had arisen in the school. On these grounds, he urges that the petition be dismissed.

7. We have already discussed about the efforts made by the management for seeking permission of the Education Officer to fill up the post of Junior Clerk which had arisen on the retirement of a Junior Clerk. We have also stated as to how the Education Officer did not give response, not only to the several letters sent to him by the school management but also to the letter sent by the Additional Secretary to take his decision keeping in view the Government Resolution dated 23.10.2013. This indifference and non-responsiveness of the Education Officer has created unnecessary complications in this case. If the Education Officer at that time itself had responded in one way or the other, this litigation would not have arisen. That apart, the silence maintained by the Education Officer for almost one year could be taken as the deemed permission granted by him.

8. Then, reliance placed upon the Government Resolution dated 12.2.2015 by the Education Officer and also the Government Resolutions dated 28.1.2019 and 7.3.2019 is

misplaced. The staffing pattern, it is not in dispute, was already approved by the Government Resolution dated 23.10.2013 and this vacancy having arisen w.e.f. 1.4.2013, was to be filled up as per the approved staffing pattern issued vide Government Resolution dated 23.10.2013. To this appointment, the subsequent Government Resolutions whether of 12.2.2015 or 28.1.2019 or 7.3.2019 were not applicable. The question of considering the surplus staff being absorbed as Junior Clerks also did not arise at the time when the permission to fill up the vacancy was sought as the Education Officer never wrote any letter to the school management for absorbing any surplus staff earlier. Besides, the vacancy was filled up by following due procedure. Thus, we find that the long silence of Education Officer itself has the effect of deemed permission having been granted by the Education Officer for filling up the vacant post of Junior Clerk. As regards, the due procedure, we find that it has been followed by the management and on that count no fault could be found. It follows that impugned order is bad in law.

9. In the result, we allow the petition and it is allowed in terms of prayer clauses (1), (3) and (4) which read as follows:-

“1) Quash and set aside the order passed by the respondent No.2 Education Officer (Secondary), Zilla Parishad, Wardha dated 12-09-2016 (Annexure No.18) being contrary to the rules.

3) Direct respondent No.2 to grant approval in favour of respondent No.3 from the date of appointment as per the rules and further direct to release the salary of respondent No.3.

4) Direct respondents to release the salary of respondent No.3 during pendency of the petition in the post of Junior Clerk, as per the rules.”

10. We direct the Education Officer to grant necessary approval and release the unpaid salary of respondent No.3 within eight weeks from the date of the order. Rule is made absolute in the above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Tambaskar.

Signed By:NILESH VILASRAO
TAMBASKAR

Private Secretary
Date:07.07.2022 10:15