

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

Writ Petition No.1892 of 2008

Prakash S/o Harishchandra Rajurkar,
Aged about 39 years,
Occupation – Service,
R/o C/o Mr. D.R. Bhusari,
141, Mahalaxmi Nagar-3,
Manewada Road,
Nagpur-440024,
Tah. & Dist. Nagpur.

... Petitioner

Versus

1. The State of Maharashtra,
through the Commissioner,
Handicap Welfare,
Maharashtra State,
3, Church Road,
Pune-411001.
2. The Commissioner,
Backward Cell, Nagpur Division,
Nagpur, Tah. & Dist. Nagpur.
3. The District Social Welfare Officer,
Zilla Parishad, Chandrapur,
Tah. & Dist. Chandrapur.
4. The Secretary,
Sai Mati-Mand Shikshan Sanstha,
R/o Q. No.B-115, Opp. Shopping Complex,
W.C.L. Colony, Shakti Nagar,
Durgapur,
Tah. & Dist. Chandrapur.

5. Swikar Durbal Mati-Mand Niwasi
Mulanchi Shala,
through The Headmistress,
Dirajgram, Opp. Diesel Pump,
Nagpur Road, Chandrapur,
Tah. & Dist. Chandrapur.

... Respondents

Mr. A.H. Lohiya, Advocate for Petitioner.

Mr. A.A. Madiwale, Assistant Government Pleader for
Respondent Nos.1 to 3.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 6 APRIL 2022

ORAL JUDGMENT (PER NITIN JAMDAR, J.) :

Heard the learned Counsel for the parties.

2. This Petition is pending since the year 2008.

3. The Petitioner was appointed by the Respondent Nos.4 and 5- the Educational Institute on the post of Physical Training Instructor. As on date, the Petitioner is working with the Respondent Nos.4 and 5.

4. A dispute arose as to whether the approval should be granted to the appointment of the Petitioner. The Petitioner had earlier filed Writ Petition and thereafter made representation to the Social Welfare Authorities. The Respondents- Social Welfare Authorities

have refused to grant approval to the appointment of the Petitioner.

5. In this Petition, on 2 May 2008, notice was issued and *status quo* was granted. Thereafter Rule was issued on 30 September 2008 and interim relief was granted, that is the Respondent No.4- Management should be restrained from terminating the services of the Petitioner from the Post of Physical Training Instructor with a further direction to release the salary of the Petitioner. The Petitioner is working with the Respondent- Management.

6. It is settled by the law declared by the Full Bench of this Court in the case of *St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and another* [2007(1) Mh.L.J. 597] that because the approval is not granted, an employee cannot be terminated by the Management on that ground alone. It is also settled that the primary responsibility is on the Management to pay the salary to its employees as per the provisions of the Statute and the Code. The Management can claim grant if the School is admissible to it, but that does not mean that the Petitioner is treated to be a Government servant. Therefore, in essence, non-grant of approval and consequently non-release of the grant is a cause for the Management to agitate. If not, the Management will have to pay the salary.

7. In the present case, inspite of the interim order, none had appeared on behalf of the Respondent Nos.4 and 5. The Registry

has endorsed that the Respondent Nos.4 and 5 are served. Therefore neither the Respondent Nos.4 and 5 have appeared and supported the Petitioner in his cause to set aside the order refusing to grant approval nor have filed an independent Petition. The conduct of the Respondent Nos.4 and 5 will have to be noticed in this case.

8. In light of these facts, we dispose of the Petition directing the Respondent Nos.4 and 5 not to terminate the services of the Petitioner only on the ground that the approval is not granted and continue to pay the salary as applicable to the Petitioner under Schedule-C of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 subject to the right of the Management, if any, to claim from the State Government.

9. As regards the order passed by the Respondent No.3-District Social Welfare Officer regarding rejection of the proposal, in light of what we have noticed, this issue need not be decided in the present Petition and if the Respondent- Management chooses to challenge the same, the same is kept open.

10. The Writ Petition is accordingly disposed of. No order as to costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)