

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

WRIT PETITION NO.2335 OF 2020

Swarup s/o Suresh Rahangdale,
Aged about 35 years,
Occupation-Assistant Teacher,
R/o Suyog Colony, Goregaon,
Tah. Goregaon, District Gondia

... Petitioner

-vs-

1. State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032
2. The Education Officer (Secondary),
Zilla Parisha, Gondia, Near Collector
Building, Gondia, Tah. And District Gondia
3. Shri Chakradhar Bahu-uddheshiya
Shikshan and Vikas Sanstha, Gondia,
Through its Secretary, Office at 'Krushnakunj',
Ganesh Nagar, Gondia, Tah. And District Gondia
4. Manibai Ishwarbhai Patel High School &
Junior College, Soni at & Post Soni,
Tah. Goregaon, District Gondia

... Respondents

Shri I. N. Choudhari, Advocate for petitioner.

Shri D. P. Thakare, Additional Government Pleader for respondent Nos.1
and 2.

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

DATE : August 10, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

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

The challenge raised in this writ petition is to the orders

dated 04/04/2018 and 03/12/2019 issued by the Education Officer (Secondary) approving the transfer of the petitioner from un-aided Section of the school to the aided Section of the school on the post of Shikshan Sewak.

2. The petitioner was appointed as an Assistant Teacher on 25/02/2013 on un-aided Section of the respondent No.4-school run by respondent No.3-Society. His appointment was approved on 24/05/2013 as an Assistant Teacher for the period of probation. On completing the period of probation the petitioner's services were continued and thereafter on 20/10/2015 the approval was further granted to the appointment of the petitioner as Assistant Teacher. Since an Assistant Teacher on aided Section of the school retired, the services of the petitioner were transferred on 09/11/2016. After the petitioner's appointment on the said post, a proposal was submitted for approving the same. Since approval was initially refused by the Education Officer, the petitioner had approached this Court in Writ Petition No.3635/2017 and by the order dated 20/02/2017 this Court had directed the Education Officer to grant approval to the petitioner's appointment. Such approval has been granted on 04/04/2018 however on the post of Shikshan Sewak from 11/11/2016 for the period of probation. Subsequently on 13/12/2019 approval had been

granted to the appointment of the petitioner as Assistant Teacher for the period from 11/11/2019 until further orders by observing that the period of probation on the post of Shikshan Sewak had come to an end. Being aggrieved the petitioner has challenged the aforesaid order.

3. The learned counsel for the petitioner placed reliance on the decision in *Sandip s/o Dilip Thorat vs. The State of Maharashtra and ors. 2022(1) ALL MR 322* to submit that the petitioner's transfer ought to have been approved as Assistant Teacher since his initial appointment was also on the post of Assistant Teacher, the approval to the transfer should not have been granted on the post of Shikshan Sewak.

4. The learned Additional Government Pleader for respondent Nos.1 and 2 was directed to verify whether the ratio of the aforesaid judgment could be applied to the present case. After going through the said judgment it is submitted that the petitioner would be entitled to benefit of the said judgment. From the facts noted above it is clear that the petitioner's initial appointment was as Assistant Teacher in an un-aided Section. By the time he was transferred, the petitioner had completed the period of probation and therefore there was no impediment to approve the order of transfer as Assistant Teacher. The

impugned order dated 04/04/2018 approving his services as Shikshan Sewak from 11/11/2016 was therefore uncalled for. For the same reason the subsequent order dated 13/12/2019 was required to be passed by approving his appointment as Assistant Teacher from 11/11/2016 onwards.

5. Hence for aforesaid reasons and also in view of the decision in *Sandip Dilip Thorat* (supra), the following order is passed :

The order dated 04/04/2018 passed by the Education Officer (Secondary) is modified by treating the approval to the petitioner's appointment on the post of Assistant Teacher from 11/11/2016 until further orders. Consequently the order dated 03/12/2019 would not survive and the same is accordingly set aside.

The petitioner would be entitled to benefits flowing from the order granting approval as admissible to him.

Rule is made absolute in aforesaid terms with no order as to costs.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)