

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

WRIT PETITION NO. 4661 of 2021

Nishant s/o Madhukar Somkuwar,
Aged about 37 years, Occ.:Service,
R/o at Post Nanda Gomukh,
Tahsil Saoner, District Nagpur.

..... **PETITIONER**

...VERSUS...

1. State of Maharashtra,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. Commissioner of Education,
Central Building, Shivaji Nagar, Pune.
3. Director of Secondary and Higher Secondary
Education, Maharashtra State, Central Building,
Pune.
4. Deputy Director of Education,
Nagpur Division, Balbharti Building,
Dhantoli, Nagpur.
5. Education Officer (Secondary),
Zilla Parishad, Nagpur.
6. Secretary,
Saraswati Prasadik Education Society,
Nanda Gomukh, Tahsil Saoner, Dist. Nagpur.
7. Head Master,
Gomukh Vidyalaya, Bichwa,
Tahsil Saoner, District Nagpur.
8. Head Master,
Gomukh Vidyalaya, Pipla (K),
Tahsil Narkhed, District Nagpur.

..... **RESPONDENTS**

Shri Ujwal J. Deshpande, Advocate for petitioner.

Ms N.P.Mehta, Assistant Government Pleader for respondent nos. 1 to 5.

Shri Ajay Mohril, Advocate h/f Shri B. G. Kulkarni, Advocate for respondent no.6.

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

DATE :- JUNE 17, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

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

2. The petitioner was appointed as an 'Assistant Teacher' at the respondent no.7-School on 08.07.2010 on an unaided section. The appointment was on probation for a period of two years. His appointment came to be approved by the Education Officer (Secondary) on 15.11.2014 for the period of probation. Subsequently on 01.11.2019 the services of the petitioner were transferred on an aided section of the school pursuant to disposal of Writ Petition No.7973/2018. The Education Officer (Secondary) on 12.03.2020 while granting approval held that such approval would be on the post of 'Shikshan Sevak' from 01.11.2019 for a period of three years. Being aggrieved by granting such approval, the petitioner has challenged the same in this writ petition.

3. After hearing the learned counsel for the parties, it is seen that the issue as raised in this writ petition has been considered and decided at the Principal Seat in Writ Petition No. 5258 of 2012 (*Ms.Sandhya L. Ghosalkar vs. The State of Maharashtra and ors.*) with connected writ petitions on 12.09.2012. In paragraph 4 of the said decision, it has been observed as under:

“4. In our view, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three petitioners. If the petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is specially so having due regard to the fact that they were similarly circumstanced with other teachers in whose case approval was granted as Assistant Teachers.”

4. It is therefore clear that since the initial appointment of the petitioner was on the post of ‘Assistant Teacher’, it was not permissible to approve his services on the post of ‘Shikshan Sevak’ after having rendered service which was more than nine years from his initial appointment. The services of the petitioner were liable to be approved on the post of ‘Assistant Teacher’.

5. In that view of the matter, the order dated 12.03.2020 passed by the Education Officer (Secondary) is set aside. It is directed that the services of the petitioner shall be approved on the post of ‘Assistant Teacher’ in the manner prescribed in the order dated 12.03.2020. Necessary steps be taken within four weeks from the date of receipt of copy of this order.

Rule is made absolute in aforesaid terms. No costs.

(URMILA S. JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)