

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

WRIT PETITION NO. 4989/2021

Mohammad Shabir Abdul Aziz,
Aged about 42 years, Occ.-Service,
R/o Shirpur (Jain), Tq. Malegaon, District – Washim.

PETITIONER

-VERSUS-

1. Shahid Abdul Hameed Bahu Uddeshiya Sanstha,
Mehkar, P/o Mehkar, Tq. Mehkar, District -
Buldana. Through its President.
2. Principal, Pir Mohammad Urdu High School,
Shirpur (Jain), Tq. Malegaon, District - Washim,
Through its Headmaster.
3. Education Officer (Secondary),
Zilla Parishad, Washim

RESPONDENTS

Shri H.A. Deshpande, counsel for the petitioner.
Shri J.B. Gandhi, counsel for the respondent nos.1 and 2.
Ms H.N. Jaipurkar, Assistant Government Pleader for the respondent no.3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

DATE : OCTOBER 11, 2022.

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

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

2. The challenge raised in this writ petition is to the order dated 28.10.2020 passed by the Education Officer (Secondary), Zilla Parishad, Washim thereby refusing to grant approval to the appointment of the petitioner.

Inter alia, it is submitted that the impugned order has been passed without hearing the petitioner.

3. It is not necessary to refer to the facts in detail. Suffice it to mention that the petitioner was in employment with the respondent no.2-School. His services came to be terminated on 05.11.2007. The petitioner approached the School Tribunal wherein a compromise was arrived at between the parties resulting in disposal of the appeal on 03.10.2019 in terms of compromise pursis at Exhibit 71. As per the said compromise the petitioner was reinstated in service and he gave up the claim of back wages. Thereafter steps were taken to seek approval tot he petitioner's appointment. The petitioner himself on 24.11.2019 issued a communication to the Education Officer (Secondary) and sought grant of approval to his appointment. On 28.10.2020 the Education Officer (Secondary) refused to grant approval by assigning various reasons.

4. On hearing the learned counsel for the parties we find that the proposal dated 24.11.2019 has been rejected without hearing the petitioner. Further it is the grievance of the petitioner that the communication issued by the Management that was relied upon for rejecting the proposal was not supplied to the petitioner. The petitioner seeks to justify his claim for grant of approval by relying upon various documents. We however find that since the impugned order was passed without hearing the petitioner the interests of justice would be served by directing the Education Officer (Secondary) to re-consider the said request dated 24.11.2019 by granting due opportunity to the petitioner as well as the respondent nos.1 and 2.

5. In view of aforesaid, the following order is passed:-

- I) The order dated 28.10.2020 passed by the Education Officer (Secondary) is set aside as it has been passed without hearing the petitioner.
- II) The Education Officer (Secondary) shall re-consider the petitioner's request as contained in the communication dated 24.11.2019 for grant of approval.
- III) The respondent no.1-Management shall cooperate in the said exercise and place before the Education Officer (Secondary) all relevant documents as sought by the Education Officer (Secondary)/petitioner.
- IV) The aforesaid exercise of submission of relevant documents shall be undertaken within a period of four weeks from today. Within a period of four weeks thereafter the Education Officer (Secondary) shall take a decision on the prayer for grant of approval to the petitioner's appointment.
- V) All rival contentions are kept open for being raised before the Education Officer (Secondary).

6. The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

APTE