

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

WRIT PETITION NO. 5180 of 2021

Vakil Nabi Sheikh,
Aged about 41 years, Occupation : Assistant Teacher.
Girjabai Kanya High School,
Tirora, Tahsil Tirora, District Gondia.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra, through its Secretary,
School Education Department,
Mantralaya, Mumbai -32.
2. Deputy Director of Education,
Nagpur Division, Nagpur.
Balbharti, Near Dhantoli Garden,
Dhantoli, Nagpur-440 012.
3. Education Officer (Secondary),
Zilla Parishad, Gondia,
Tahsil and District Gondia.
4. Tarachand Khadse Magasvargiya Shikshan
Prasarak Sanstha, Nagpur, through its President,
R/o Priyadarshani Colony, Near R.T.O. Nagpur.
Tahsil and District Nagpur.
5. Girjabai Kanya High School,
Tirora, through its Head Mistress,
Near Government Sub District Hospital,
Tirora, Tahsil Tirora and District Gondia.

..... **RESPONDENTS**

Shri I. N. Choudhari, Advocate for petitioner.
Ms S. S. Jachak, Assistant Government Pleader for respondent nos. 1 to 3.
None for respondent nos. 4 and 5 though served.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- SEPTEMBER 07, 2022.

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

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

2. The petitioner who has obtained the qualifications of B.A. B.Ed. in the subject of English was appointed on the post of Assistant Teacher on 09.10.2012 on probation. This appointment of the petitioner was on an unaided section. On 31.08.2019 one Shri A.G.Ramteke, who was serving as Assistant Teacher on the aided section superannuated. The petitioner thus sought his transfer from the unaided section to the aided section. He was accordingly transferred to the aided section. Since the proposal seeking grant of approval to the same had not been considered, this Court in Writ Petition No.6655/2019 directed the Education Officer to take a decision thereon. Accordingly on 02.01.2020 the Education Officer noted that the petitioner had been appointed to teach subject of English and that in the entire district there was no surplus teacher for that subject, the approval was granted and the petitioner came to be transferred on the aided section on the post of Assistant Teacher. The respondent no.2-Deputy Director of Education re-considered the matter of grant of approval to the appointment of the petitioner and on 12.11.2021 proceeded to cancel the order of approval on the ground that in the information furnished by the Head Mistress it was stated that the post that was vacant related to

the subjects of Marathi and History while the approval granted to the petitioner was for the subject of English. Being aggrieved the petitioner has challenged the aforesaid order.

3. Shri I. N. Choudhari, learned counsel for the petitioner submitted that the petitioner has obtained necessary qualification for teaching the subject English. Alongwith the said subject, the petitioner was also teaching the subjects of Marathi and Social Science. In the information furnished by the Head Mistress in Form A it was inadvertently mentioned that the petitioner was teaching the subjects of Marathi and History. It is on that basis the approval granted to the petitioner has been cancelled. The learned counsel invited attention to the communication dated 26.10.2021 issued by the Head Mistress to the Deputy Director of Education in which it was stated that inadvertently reference was made to the subject of History while furnishing the information of the subjects being taught by the petitioner. The learned counsel also invited attention to the time table for the relevant period to indicate the subjects in which instructions were being rendered. It is thus submitted that on these counts, the approval granted was not liable to be cancelled.

4. Ms S.S.Jachak, learned Assistant Government Pleader for the respondent nos. 1 to 3 relied upon the affidavit in reply filed on behalf of the respondent nos. 1 and 2 and submitted that since the petitioner was teaching the subject of English and Shri A.G.Ramteke who had retired was teaching the subjects of Marathi and History,

the approval was wrongly granted to the petitioner and the same came to be cancelled.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The fact that the petitioner is duly qualified to teach the subject of English and was also teaching the subjects of Marathi and Social Science is clear from the certificate issued by the Head Mistress. Shri A.G.Ramteke, who had retired was also teaching the said subjects which is clear from another certificate issued by the Head Mistress. The order of approval dated 02.01.2020 indicates that the petitioner was appointed to teach the subject of English and there were no surplus teachers in the district for that subject. In the information furnished by the Head Mistress while seeking approval, it has been incorrectly stated that the petitioner was teaching the subjects of Marathi and History. It is on that basis the Deputy Director of Education has proceeded to cancel the approval.

6. We find that in the light of substantial material on record to indicate that the petitioner was teaching the subjects of English, Marathi and Social Science and that he was appointed for teaching the subject of English, the matter requires re-consideration by the Deputy Director of Education. It is clear that in view of the information supplied by the Head Mistress, the Deputy Director of Education has observed that the petitioner was teaching the subject of History. While re-considering this aspect the time table on the basis of which the petitioner was discharging duties

can also be taken into consideration.

7. For all these reasons, the order dated 12.11.2021 passed by the respondent no.2-Deputy Director of Education is set aside. It is directed that the respondent no.2 shall re-consider the matter by considering all relevant material including the certificates issued by the Head Mistress alongwith the time table in which the petitioner was imparting instructions. To enable adjudication of the aforesaid issue, the petitioner as well as the Head Mistress of the School in question shall attend the Office of the Deputy Director of Education on 20.09.2022. The parties are free to rely upon additional documents in support of their stands. A decision on the question whether the approval is liable to be cancelled or not be taken within a period of six weeks from the first date of appearance of the parties. All points raised in the writ petition are kept open.

The writ petition is allowed in aforesaid terms. Rule accordingly. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..