

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

WRIT PETITION NO. 8005/2019

1. Ramesh Bhimrao Khadse,
Aged about – 35 years, Occ-Service,
R/o Kharola, Post Kajalamba, Tq. And Dist. Washim.
2. Jambukeshwar Samaj Vikas Sanstha,
through its Secretary, R/o Kharola,
Post Kajalamba, Tq. And Dist. Washim.

PETITIONERS

.....VERSUS.....

Deputy Director of Education,
Amravati Division, Amravati, Tq. And Dist. Amravati.

RESPONDENT

Shri P.S. Patil, counsel for the petitioners.
Mrs. M.H. Deshmukh, Assistant Government Pleader for the respondent.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 08TH MARCH, 2022.

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

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

2. The petitioners are aggrieved by the order dated 04.05.2019
passed by the Deputy Director of Education, Amravati Division, Amravati
refusing to grant approval to the appointment of the petitioner no.1 as
Higher Secondary School Teacher.

3. It is the case of the petitioners that pursuant to an advertisement issued by the petitioner no.2-Management the petitioner no.1 had applied for the post of Assistant Teacher/Junior College Teacher. The petitioner no.1 was duly appointed on 08.07.2013. However his services came to be terminated on 13.07.2016. The petitioner no.1 challenged the order of termination by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the said Act'). Since the school was being run on non-grant basis, it was only the Management that was impleaded in the said appeal. By the judgment dated 15.01.2019 the School Tribunal allowed the appeal and set aside the order of termination. The services of the petitioner no.1 were directed to be reinstated alongwith back wages. Thereafter the Management forwarded the proposal of the petitioner no.1 seeking approval to his appointment. The said proposal has been rejected principally on the ground that the Education Department was not a party-respondent in the appeal before the School Tribunal and there was no prior permission of the Deputy Director of Education for issuance of the advertisement. Hence this writ petition.

4. Heard the learned counsel for the parties and perused the documents placed on record. The judgment of the School Tribunal dated

15.01.2019 indicates that one of the grounds raised by the Management was the absence of an advertisement being issued prior to the appointment of the petitioner no.1. In paragraph 16 of that judgment, the Tribunal has recorded a finding that since the petitioner no.1 had placed on record the advertisement, the minutes of the Selection Committee and his subsequent appointment, it was for the Management to substantiate the non-compliance of the requisite formalities. The defence taken by the Management was turned down. This judgment has attained finality. Though it is true that the Education Department was not a party to the said appeal, it is also to be kept in mind that the school was not receiving any grant-in-aid from the State Exchequer. While considering the proposal for grant of approval, it would not be open for the respondent to re-open the issues already decided by the School Tribunal. The aspect of absence of advertisement having been considered by the School Tribunal it was not open for the respondent in the impugned order to have considered that aspect. We find that the principal reason given for refusing the approval is that the Education Department was not a party to the appeal. Though in the affidavit-in-reply further grounds are sought to be added we are not inclined to examine those grounds since the validity of the impugned order will have to be considered on the basis of the reasons mentioned therein.

5. Since it is found that the proposal seeking grant of approval to the appointment of the petitioner no.1 has been rejected on untenable grounds, we are inclined to direct the respondent to re-examine the proposal for grant of approval without re-opening the issues already decided by the School Tribunal.

6. Accordingly, the order dated 04.05.2019 passed by the Deputy Director of Education is set aside. The said Authority shall re-examine the proposal dated 07.02.2019 that has been forwarded by the petitioner no.2-Management seeking approval to the appointment of the petitioner no.1. While re-examining the aforesaid proposal, the points decided in Appeal No.45 of 2016 by the School Tribunal shall not be re-opened. The proposal shall be decided on its own merits within a period of four weeks from the production of this order before the Deputy Director of Education, Amravati Division, Amravati. The decision taken shall be communicated to the petitioners.

7. The writ petition is disposed of with aforesaid directions. Rule accordingly. No costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)