

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2786 OF 2020

Satish s/o Rohidas Pawar,
Age; 38 years, Occ; Assistant Teacher (T)
R/o; Plot No. 181, Saneguruji Housing
Society, Parijat Nagar, N-5, CIDCO,
Aurangabad.

...PETITIONER

VERSUS

1. Gramaudyogik Shikshan Mandal,
Aurangabad M.I.T. Campus,
Beed Bypass Road, Aurangabad
(Through its Secretary)
2. Jagdale Mama Institute of Rural
Technology,
Tq. Washi, District; Osmanabad,
(Through its Head Master).
3. District Vocational Education & Training
Officer,
Central Building, Yedshi Road,
District; Osmanabad.
4. Deputy Director of Vocational Education
& Training Regional Officer,
Bhadkal Gate, District; Aurangabad.
5. The State of Maharashtra,
(Through its Secretary)
School Education Department,
Mantralaya, Mumbai.

...RESPONDENTS

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Advocate for the petitioner : Mr.Dr. R.J. Godbole
Advocate for Respondent Nos.1 & 2 : Mr. P.R. Katneshwarkar
AGP for the Respondent Nos. 3 to 5/State : Mr.K.N.Lokhande
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CORAM : KISHORE C. SANT, J.

DATE OF RESERVATION : 26.06.2023
DATE OF PRONOUNCEMENT : 19.07.2023

JUDGMENT :

1. Rule. Rule made returnable forthwith, with consent of the learned Advocates for the respective parties.
2. This petition is by the un-successful Assistant Teacher who lost in appeal preferred by him against the termination order before the School Tribunal Pune, bearing No. 40/2012 decided on 19.01.2019. Respondent No. 1 is Secretary of Gramaudyogik Shikshan Mandal, Respondent No. 2 is Head Master of J.I.R.T. Technical School, respondent No. 3 is a District Vocational Education and training Officer, Osmanabad, respondent No. 4 is Deputy Director of Vocational Education, Aurangabad and respondent No. 5 is the State of Maharashtra.
3. The facts in short are that the petitioner belongs to VJ (A) Category having qualification as M.A. (English) B.Ed. (English and History). The respondent Management issued an advertisement for

three posts of teacher for the subject of English. The petitioner applied in response to the advertisement. He came to be appointed after conducting an interview by the Committee. The appointment to the petitioner was given on probation for two years by order dated 02.07.2009. However, lateron, 23.09.2011, the respondent Management again issued an advertisement for the post of Assistant Teacher. He was directed to appear for the interview pursuant to the second advertisement.

4. It is further case of the petitioner that on 15.06.2012 after reopening of the School the petitioner was not allowed to sign the muster and to join the duites. The petitioner, therefore, approached to the School Tribunal stating that the case is of otherwise termination. The Management appeared before the Tribunal and opposed the prayers in appeal. It is the case of the Management that the petitioner was appointed on probation, however, his services were not found to be satisfactory and the post was therefore, re-advertised. Pursuant to the advertisement, the petitioner appeared for the interview, however, his performance in the interview was not satisfactory, therefore, he was not given appointment. It is a specifc case of the Management that no approval was given to the appointment of the petitioner, therefore, the post was re-advertised. Pursuant to the advertisement he was

not selected. In the appointment order itself it is clearly stated that the appointment is subject to the approval by respondent No. 4. It is for these reasons the post was re-advertised. The petitioner was already terminated by letter dated 30.04.2010. After termination the petitioner was working on clock hour basis. It is the case of the Management that the petitioner has suppressed this fact. After re-advertisement an interview was conducted on 28.03.2012, but the performance of the petitioner was not up to the mark and therefore, the petitioner was not selected. None of the candidates were found to be suitable and the post was advertised for 3rd time on 22.06.2012.

5. The learned Member, School Tribunal, Pune held that for want of approval from the authority cum respondent No. 4 the services of the petitioner were terminated. The fact that the petitioner appeared for the interview held on 28.03.2012 is taken as that the petitioner has accepted the order of termination dated 30.04.2010. The School Tribunal thus, held that the case is of otherwise termination. The petitioner is not selected, therefore, has not given further appointment and dismissed the appeal.

6. The learned Advocate for the petitioner submits that he was qualified and was duly selected pursuant to the post advertised.

Without any reason the Management re-advertised the post. The Secretary by putting pressure upon him asked him to appear for interview and therefore, he had appeared for the interview. He further submits that on 09.07.2012 he had even given a letter to respondent No. 2. He further submits that when he was appointed for the first time, he was not given to understand that his appointment was subject to approval by respondent No. 4. When he was appointed on probation he should have been continued. The letter of appointment dated 02.07.2009 itself states that the appointment is on probation. The petitioner's case is that by not allowing him to join duties is clearly amounts to otherwise termination. The Management thereafter, could not have passed the order dated 30.04.2010 terminating his services on the ground that no approval was granted. The stand of the Management that the petitioner was directed to work on Clock Hour basis is not correct as there is no order on record to that effect. He challenged the findings of the tribunal holding that the petitioner was working on Clock Hour basis after his termination from 30.04.2010. He submits that when the advertisement is being issued the employee has no reason to know that the said is issued with prior approval or without approval. For the fault of the Management, the employee should not be made to suffer and submits that the Tribunal's judgment deserves to be

quashed and set aside.

7. The learned Advocate for the respondent management submits that the Tribunal has rightly considered all the aspects. The first appointment of the petitioner itself was subject to the approval from respondent No. 4. When no approval was granted, he was rightly terminated by letter dated 30.04.2012 and since the School was running the petitioner was requested to work on Clock Hour basis, so he continued to work. He submits that these material facts have been suppressed by the petitioner from the School Tribunal. The order dated 30.04.2010 was very much served upon the petitioner and there is also counter signature showing that he has received the termination order. In response to the 2nd advertisement, since no suitable candidate was available, the post was advertised for 2nd time. Even the petitioner was not found to be suitable in the interview in response to the 2nd advertisement. The petitioner's conduct in appearing for the interview clearly shows that on the day he was not in service so there is no question of otherwise termination at the time of opening of School. Since the post was vacant it was advertised for 3rd time. He submits that the learned Member of the School Tribunal has rightly appreciated the documents placed on record by the Management and prays for rejection of the petition.

8. This Court has gone through the judgment of the School Tribunal. The material produced on record and the submissions of both the Advocates, this Court finds substance in the submissions of the Management that the initial appointment of the petitioner itself was subject to the approval by respondent No. 4. Once the approval was not granted by the respondent No. 4, there was no question of continuing the petitioner in service. As there was no approval, the management had rightly passed order on 13.04.2011 terminating the services of the petitioner. No fault can be found by the Management. The order was admittedly on probation and the management can always terminate the said without any enquiry or charges. Petitioner can raise grievance only if the order is stigmatic. This termination order, however, is not assailed by the petitioner. Even, thereafter, he continued to work on Clock Hour basis without being there any appointment order. It is further fact that the petitioner appeared for the interview on 12.02.2011, clearly shows that he had accepted the earlier order and therefore, he had appeared for the interview. Having appeared for the interview now it is not open for the petitioner to still contend that he was in service and his services came to be terminated otherwise. The fact itself further shows that as the Management could not get a suitable candidate, the post was advertised for 3rd time. All these facts

necessarily goes to show that there is no substance in the contention of the petitioner.

9. The second aspect needs to be considered is that for the lapses of the Management an employee cannot be suffered, however, the appointment of the employee itself is subject to the approval by respondent No. 4. There is clearly stipulation in the appointment order itself that it is subject to the approval by respondent No. 4, the petitioner cannot ignore this fact, at least after receiving the order of appointment. Thus, he he was aware that from the date of joining that if the approval is not granted his appointment would not be confirmed.

10. The reliance of the petitioner is on the judgment of this Court in the case of St. Ulai High School and Another Vs. Devendraprasad Jagannath Singh and Another **Second Appeal No. 533 of 2001 with Civil Application Nos. 1437 of 2003 and 1446 of 2006, decided on 18.12.2006 (Bombay High Court)**. However, the facts of the case are not applicable to the present case. In another judgment is in the case of Prabakar Shrikishna Kokade Vs. Adivasi Magaswarg Shikshan Mandal, Sindewahi and Another **Writ Petition 211 of 1985 decided on 21.03.1991 (Nagpur Bench)** , it was the case that the services of Headmaster were terminated and his service was

covered by Section 5 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Thus, this Court finds that even the facts of this case are not applicable to the present case.

11. As in this case the appointment itself was without approval. This termination order itself is not challenged. Though the petitioner has not produced order dated 30.04.2010 on record and the management has produced on record. This Court finds that thus, there was no cause of action to the petitioner as stated by him to file the appeal. This court finds that the Tribunal has rightly held that once appointment itself was subject to the approval by respondent No. 4 and since the same was not granted, this Court finds that no right was created in favour of the petitioner. This Court finds that the learned Officer of the Tribunal was correct and no fault is found. In the result, this Court finds that the petition deserves to be dismissed and the same is dismissed. Rule stands discharged.

(KISHORE C. SANT)
JUDGE