

(1)

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

909 WRIT PETITION NO.11425 OF 2022

Harsh s/o Ramchandra Shinde,
Age 44 yrs. Occ. Services
as a Librarian,
R/o Near Manohar Talkies,
Near Ambedkar Chowk,
Dhule, Tq. and Dist. Dhule

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32
2. The Deputy Direction of Education,
Nashik Division, Nashik
3. The Education Officer (Secondary)
Zilla Parishad, Nandurbar
4. West Khandesh Bhagini Seva
Mandal, Dhule Vidhyanagari, Devpur,
Tq. & Dist. Dhule,
Through its President/Secretary
5. Kamla Nehru Kanya Secondary
and Higher Secondary School,
Tq. & Dist. Nandurbar,
Through its Head Master

....RESPONDENTS

....

Mr V. S. Panpatte, Advocate for petitioner;
Mr S. G. Sangle, A.G.P. for respondent Nos.1 to 3
Mr A. S. Shelke, Advocate for respondent Nos.4 & 5

(2)

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 2nd February, 2023

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.) :-

1. We have considered the strenuous submissions of the learned Advocate for the petitioner, the learned Advocate for respondent Nos.4 and 5 and the learned A.G.P. appearing on behalf of respondent Nos.1 to 3.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The petitioner has put forth prayer clauses (B), (C), (D) and (E), which read as under :-

“B) To hold and declare that, the appointment of the Petitioner to aided post is legal and valid one.

C) By issue of Writ of mandamus or Order or direction in the like nature, the impugned order dated 01.07.2022 (Exh. N) passed by the Respondent No. 3 Education Officer (Secondary) Zilla Parishad, Nandurbar, may kindly be quashed and set aside.

D) By issue of Writ mandamus or Order or direction in the like nature, the Respondent No. 3 Education Officer (Secondary) Z.P. Nandurbar, may kindly be directed to grant approval to the post of Petitioner and to pay regular

(3)

salary to the petitioner working with respondent no. 5 school.

E) By issue of Writ mandamus or Order or direction in the like nature, the Respondent No. 2 Deputy Director of Education, Nashik may kindly be directed to grant sanction to include name of petitioner in Shalarth ID with further directions to see that, his arrears and salary over the post will be disbursed and released.”

4. There is no dispute that an employee of the Management, namely, Bapu Kautik Patil, who was a ‘Full Time Librarian’, died on 13/11/2013. The Management sought permission of the Education Officer to resort to recruitment to fill in the vacancy which fell vacant, by a communication dated 25/11/2023. The Education Officer received the said communication on the same date and did not respond to the request. Thereafter, the Management approached the District Employment Exchange, vide communication dated 23/12/2013, praying for forwarding a list of candidates, who are enrolled with the Employment Exchange and who have acquired the qualification of Bachelor of Library and Information Science or Master of Library and Information Science with MS-CIT, since one post for the Special Backward Class had to be filled in. The Assistant Director, District Employment and Self Employment, Nandurbar, informed

(4)

the Management vide communication dated 24/12/2013 that, they can refer to the website www.maharojgar.gov.in and check for the enlisted candidates, who are eligible for appointment as a 'Librarian'. An Advertisement was also published in 'Daily Nand Darshan' on 24/12/2013. This newspaper is enlisted by the Government in the approved list of the newspaper, in which advertisement for recruitment can be published.

5. The Headmaster of the School then informed the District Employment and Self Employment Officer vide communication dated 07/01/2014 that, interviews have been scheduled on 27/01/2014. After conducting the process of selection, the petitioner was selected and appointed. The petitioner has placed before us a list of the candidates, who had participated in the interviews. There were in all 10 candidates and the petitioner was one of them. A chart of the scores of each of the candidates is also placed before the Court. Considering the marks allotted by the Committee, which conducted the interviews, the petitioner, who belongs to the Scheduled Castes category ('Hindu Mahar'), scored 20 marks out of 25. The candidate at Sr. No.2 in the merit list scored 15 marks followed by the other candidates. By a unanimous decision, the Management informed the Education

(5)

Officer about appointing the petitioner as a 'Librarian' from 01/02/2014 and forwarded a proposal for approval to the Education Officer on 20/02/2014. By the impugned order dated 01/07/2022, the Education Officer has rejected the proposal, after 8 years and 5 months, on the ground that there was a ban on recruitment.

6. The petitioner has relied upon a judgment delivered at the Principal Seat, dated 19/01/2021, in Writ Petition No.3525/2019, filed by Shrikrishna Bhikaji Bondge Vs. State of Maharashtra. By the said judgment, this Court has concluded that the Government Resolution dated 01/07/2009 permits recruitment as per the staffing pattern. The Government Resolution dated 12/02/2015, imposing a ban on recruitment, would not be applicable retrospectively. So also, the said Government Resolution read with Government Resolution dated 23/10/2013 pertains to providing surplus staff. In the instant case, neither the Education Officer has forwarded any surplus staff, nor has he responded to the request of the Management, seeking permission to recruit the vacant post of a 'Librarian'. It is subsequently on 08/12/2017, that the Deputy Director of Education, Nagpur Division, Nagpur, informed the Deputy Director of Education,

(6)

Nashik Division, Nashik that, there are 6 surplus teachers, who were working as 'Part Time Librarian' and who are eligible to be appointed on the post of 'Full Time Librarian'. This development is after 4 years, much after the appointment of the petitioner on 30/01/2014. By that time, his probation period of 2 years, was also over.

7. We do notice one aspect in this case that, the Management has acted with electric speed. After Babu Kautik Patil died on 13/11/2013, they moved the Education Officer on 25/11/2013. No doubt, the Education Officer did not respond for a month. However, there was no reminder from the Management to the Education Officer and the Advertisement was published on 24/12/2013 in a newspaper, which did not have wide circulation. Nevertheless, the petitioner/employee cannot be held responsible for this swift action of the Management. He has now been working for almost 9 years and is around 45 years of age. It would be inappropriate to disturb his employment on the ground that the Management did not show patience till the Education Department tendered the list of surplus teachers, one of whom could be absorbed as a 'Librarian'.

(7)

8. In view of the above, this petition is allowed. The impugned order dated 01/07/2022, refusing approval, is quashed and set aside. The follow up action at the behest of the Education Officer with regard to including the name of the petitioner in the 'Shalarth ID', would be initiated without delay. We deem it appropriate to caution the Management as well as the Education Officer for the manner in which they have acted, as is recorded in the foregoing paragraphs.

9. Rule is made absolute accordingly.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

sjk