

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 141 OF 2021

Jitendra Ganapati Mane

.Petitioner

Vs.

The President/Secretary, Malludevi Shikshan
Prasarak Mandal, District – Sangli & ors.

.Respondents

Ms. Archana P. Gaikwad, Advocate, for the Petitioner

Ms. Suchita J. Pawar a/w. Mr. Sanjeev B. Deore, Advocate, for
Respondent Nos. 1 & 2

Mr. A. B. Chate, Addl. GP, for the Respondent – State

CORAM : MADHAV J. JAMDAR, J.

DATE : 18.12.2023

ORAL JUDGMENT

1. Heard Ms. Gaikwad, learned Counsel appearing for the Petitioner, Ms. Pawar, learned Counsel appearing for Respondent Nos. 1 & 2 and Mr. Chate, learned Addl. GP appearing for the Respondent – State.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 20.11.2017 (“**impugned order**”) passed by the learned Presiding Officer, School Tribunal, Kolhapur (“**Tribunal**”).

3. In the impugned Order, the challenge is to the Order of termination dated 17.01.2016 rejecting the prayer for reinstatement with back wages and Respondent No. 1 is directed to pay, as a compensation, to the Appellant full salary of six months as per Section 11(2)(e) of *the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977*. The learned Tribunal directed that the Petitioner shall have preferential right over the post in question. It is further directed that if the said post is vacant for his category then he is entitled for the same. If the post is not vacant, then the Petitioner shall have preferential right over the said post when in future a permanent appointment/vacancy for his category to be filled by regular recruitment/selection process arises.

4. Factual position on record shows that the Petitioner was appointed as Peon on 16.09.2002. The proposal for approval was submitted to the Respondent No. 3 - Education Officer (Secondary) on 15.01.2003 and the said proposal was not considered by the Respondent No. 3. Thereafter, the proposal was again sent every year but the same was neither approved nor rejected by the Respondent No. 3. Thereafter, the

Management orally terminated service of Respondent No. 1 on 17.01.2016. The said oral termination has been challenged in Appeal No. 16 of 2016 before the learned Tribunal and the said Appeal came to be rejected on 20.11.2017.

5. It is significant to note that learned Tribunal has specifically observed that as there was no fault of the Appellant i. e. Petitioner in not getting the appointment approved and that he actually worked for about ten years on the post given to him, Respondent Nos. 1 & 2 i. e. Management should have taken appropriate steps/actions at the appropriate stage before recruitment. No prior sanction for advertisement was obtained for recruitment in the case.

6. In view of the findings recorded by the learned Presiding Officer, it is relevant to note the decision of a learned Single Judge of this Court (Nagpur Bench) (Coram : Avinash G. Gharote, J.) in the case of ***Vidarbha Youth Welfare Society Vs. State of Maharashtra, reported in (2022) 4 Mah. L. J. 69***. In the said case, it has been held by the learned Single Judge that an appointee who is appointed after due selection to a clear vacant post cannot be penalized due to the default on part of the

Management, more so, when such appointee, has been permitted to continue in employment for years together. It has further been held that there is nothing on record in that case to show that the Education Officer had initiated any action against the Management.

7. Affidavit-in-reply which has been filed on behalf of Respondent No. 3 - Education Officer shows that reliance is placed on the Government Resolutions dated 02.05.2012, 06.02.2012 and 11.12.2020. However, it is to be seen that appointment of the Petitioner is dated 16.09.2002 and proposal for approval for his post has been sent every year from 15.01.2003 onwards. The said proposal was neither approved nor rejected by Respondent No. 3. No fault can be found with the Petitioner.

8. Learned Counsel for the Petitioner relied on a decision of a Division Bench of this Court in the case of ***Chandane Kishor Digambar Vs. State of Maharashtra***, reported in ***2017:BHC-AS :22944-DB***. In the said decision, it has been held on the basis of the decision in the case of ***Sou. Revati Kusha Wagh Vs. State of Maharashtra***, reported in ***2017 SCC OnLine Bom***

2066 that where the recruitment process has already commenced prior to the Government Resolution (“**G. R.**”) dated 02.05.2012, said G. R. will not apply to such recruitment process.

9. In this case, admittedly, the Petitioner has been appointed on 16.09.2002. Therefore, the said G. R. will not apply to the facts of the present case.

10. For the above reasons, the following order is passed.

O R D E R

(i) The Order dated 20.11.2017 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No. 16 of 2016 is hereby quashed & set aside;

(ii) The Appeal No. 16 of 2016 filed by the Petitioner before the School Tribunal, Kolhapur is allowed in terms of prayer clauses (A) & (B) of the said Appeal.

11. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)