

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5439 OF 2022**

1. **PRASAD RAJARAM MORE,**
Age-36 yrs, Occ-Service, R/at-House
No. 39, Hanuman Nagar, Rajrajeshwari
Mangal Karlaya, Jail Road, Nashik
Road, Nashik.

...PETITIONER

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA**
through the Secretary Department of
Education and Sports, Mantralaya,
Mumbai-400 001.
2. **THE EDUCATION OFFICER**
(SECONDARY), Zillah Parishad,
Nashik.
3. **SHIKSHAN MANDAL BHAGUR**
through its Secretary/Chairman,
Bhagur, Nashik.
4. **HEAD MASTER**
NUTAN VIDHYAMANDIR, Deolali
Camp, Secondary and Higher
Secondary School, Deolali Camp,
Nashik-422 401.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER **Mr Sanjeev B Deore**, *with Suchita J Pawar & Himanshu S Thakur.*

FOR RESPONDENTS **Mr SB Kale, AGP.**
No. 1 & 2-STATE

FOR RESPONDENTS **Mr NV Bandiwadekar, Senior**
No. 3 & 4 **Advocate, with Vinayak Kumbhar.**

**CORAM : G. S. Patel &
Neela Gokhale, JJ.**

RESERVED ON : 23rd June 2023

PRONOUNCED ON : 5th July 2023

JUDGMENT (Per Neela Gokhale, J):-

1. **Rule.** The Respondents have filed their Affidavits in Reply. By consent, Rule is made returnable forthwith.

2. The Petitioner has challenged the order dated 2nd March 2022 passed by the 2nd Respondent-Education Officer of the 1st Respondent-State, refusing to grant approval to the appointment of the Petitioner as Shikshan Sevak. The 4th Respondent is the Headmaster of 3rd Respondent-Management.

3. The Petition is ambiguity personified. It is replete with conflicting statements. Confusion is worse confounded, for the contesting Respondents make conflicting averments made in their own respective Reply Affidavits. There is contradiction all around.

Astonishingly, the contentions of each side score a self-goal and defeat their own stands.

4. The Petitioner claims to have completed his probation period of three years as Shikshan Sevak in the post of Trained Graduate Teacher (English). He prays for continuation in the post and disbursement of commensurate pay. The Management on the other hand claims to have terminated the probation period of the Petitioner mid-way and further claims that the Petitioner has accepted a contractual appointment thereafter. The third party in the ring is the 2nd Respondent, the Education Officer, who contends that the Petitioner *completed* the probation period of three years as Shikshan Sevak, but insists that approval to his appointment as Shikshan Sevak is refused on account of a reduction of establishment posts because of a reduction in number of students. The only point of agreement between all three Respondents is that the Petitioner absented himself from work since 1st January 2020. This is the gist of averments based on which we are called upon to return a finding.

5. The facts reveal that from 2009 to 2012 the Petitioner was appointed on a temporary contractual basis on a non-grant post in the unaided section of the 3rd Respondent School. In 2013, two aided posts of Assistant Teachers fell vacant due to the superannuation of two teachers. The Respondent-Management sought permission of the Education Officer to publish advertisements to fill up the posts. There was no response. The Management yet proceeded to issue an advertisement, call for

applications, undertook the selection process and filled up the vacant posts.

6. By an order dated 2nd December 2014, the Management appointed the Petitioner as Shikshan Sevak on probation from 3rd December 2014 to 2nd December 2017. As per procedure, a proposal for approval was forwarded to the Education Department. Before the proposal was approved, three posts of teaching staff were reduced on account of a reduction in student strength and as per the rules, the Petitioner being the last to be recruited was first to be relieved. According to the Management, and as seen from documents on record, the Petitioner acceded to his removal as Shikshan Sevak even before completing his probation period and accepted a contractual appointment on a purely temporary basis with the same Management. The documents on record clearly indicate as much.

7. The contradictions commence here. Despite terminating his probation period prematurely and appointing him on a contractual basis, the Management sent a proposal for approval of the Petitioner's appointment. To add to this conundrum, on being asked by the Department about vacancies, the Management clearly responded in the *negative* — saying there were no vacancies, and thus contradicting its own proposal for approval. This led, logically and inevitably, to the action of the Education Department refusing approval.

8. Insisting on being in continued service, the Petitioner filed Writ Petition (St) No. 98474 of 2020 in this Court, seeking various reliefs in respect of his employment. By an order dated 9th July 2021, a Division Bench of this High Court recorded the statement of the Management and accepted that the Petitioner was appointed on a year-to-year basis and since January 2020, neither had he continued his contractual appointment nor approached the school. The Petitioner in fact accepted the statement albeit complaining that he was not being allowed to join. There was no challenge by the Petitioner to his contention regarding the Management not permitting him to join.

9. Then the Petitioner filed another Writ Petition No. 5803 of 2021, again seeking directions to the Department to approved his post. By an order dated 3rd February 2022, a Division Bench of this Court directed the Education Officer to decide the pending proposal.

10. Now, upon the order of this Court, the Department galvanized itself into action. It called the Petitioner for a personal hearing. After affording him an opportunity of hearing, the Education Officer passed the impugned order, refusing approval to his appointment on account of reduction in establishment on account of reduction in strength of pupils. The Education Officer further noted that the Petitioner had remained absent since January 2020.

11. Mr Deore, learned Counsel for the Petitioner, would have it that the reduction in strength of students is in the Under-Graduate Section while the Petitioner was appointed in a Trained Graduate Post and hence there was no question of him being relieved. He relies upon Rules 26 and 27 of the Maharashtra Employees of Private Schools (Conditions of Service) ('MEPS') Rules, 1981 to buttress his case that no procedure has been followed for his being relieved and hence the impugned order is untenable. He also insists that the Petitioner is still in service, but no explanation is forthcoming in respect of previous orders of this Court in prior proceedings recording the statement that he has abandoned his service since January 2020. Mr Deore relies upon a decision of the Full Bench of this Court in the matter of *St Ulai High School & Anr v Devendraprasad Jagannath Singh & Anr*¹ to canvass that 'no approval is deemed approval'.

12. Mr Bandiwadekar, learned Counsel appearing for the Management, contests the Petitioner's claim and stands by his contentions that: *firstly*, the Petitioner has not completed the probation period; *secondly*, the Petitioner has himself accepted contractual engagement prior to completion of his probation period; *thirdly*, there is no vacancy after the reduction in establishment staff strength; and, *fourthly*, the Petitioner abandoned service from January 2020.

13. Mr Mali, learned AGP appears for the State, and supports the impugned order on the ground that the reduction in establishment

1 2007(1) Mh.L.J. 597.

resulted in the Petitioner being relieved, and hence approval was not possible for the Petitioner's appointment. He further submits that the record shows that the Petitioner abandoned service since January 2020. It was not possible, in these circumstances, Mr Mali submits to accord approval to the Petitioner's appointment.

14. The glaring contradiction in the Petitioner's own case is that while on the one hand he persists in claiming to be in service, on the other there is a prior court record that notes his statement that he has not served since January 2020. Then he contests his removal by claiming that a reduction in establishment staff strength cannot affect his service since it was in a different section. But while saying this he neglects to clarify his own statements before this Court in prior proceedings. There is no explanation about his having accepted contractual employment mid-way through his probation period.

15. Whatever the Petitioner now says, it cannot be disputed that the Petitioner has abandoned service since January 2020. To hold otherwise would be for us to sit in appeal over concluded orders. If this be so, there is no question of examining, at the Petitioner's instance, and in this third round of litigation, any questions of reduction in staff strength, vacancies, etc. The Petitioner neither finished his probation period nor continued serving on a contractual basis. His complaint therefore has no basis as he himself accepted either contractual appointment, if his claim is to be believed, or absented himself from service as per the Respondents. Thus, the Petitioner's complaint that the Respondents have not followed the

procedure under Rules 26 and 27 of the MEPS Rules, 1981, is without substance. His claim must fail. The law will not come to the aid of an employee who abandons his service, and, after two years or more comes to court seeking relief.

16. The decision of the Full Bench of this Court relied upon by Mr Deore does not support his contention that grant of approval by the Education Officer is not a condition precedent to a valid order of appointment and that approval relates to disbursal of grant in aid by the State to the Management and want of approval will not invalidate an order of appointment. The facts in the present matter are quite distinct from those in the judgment cited, in as much as the Petitioner in the present case abandoned his service and did not even complete the probation period. Hence there is no question of 'deemed approval' or grant of continuity. The authority does not lay down the proposition that in every situation 'no approval is deemed approval'. If that were so, the entire requirement for approval would be otiose, and Managements could go on appointing persons at their own will.

17. Separating the wheat from the very considerable chaff, we have no hesitation in holding that the prayer for approval of the Petitioner's service from 3rd December 2014 to 2nd December 2017 and for continuation of his service as full time teacher on 100% grant in aid cannot be granted. There is no merit in the Petition.

18. Rule discharged. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)

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