

Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3077 OF 2019

ANANDA KALLAPPA KAMBLE,
Aged: 41 years, Occupation: Nil, Residing at
Room No.727, Lane No.7, Dr Ambedkar
Chowk, Anand Nagar, Kopri, Thane East.

...PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary, School
Education Department, Mantralaya
Mumbai 400 032.
- 2. THE EDUCATION OFFICER,**
Thane Municipal Corporation, Thane.
- 3. PRIYANKA KREEDA VA**
SHAIKSHAN PRASARAK
MANDAL,
Vaitiwadi, Ramchandra Nagar, Thane
West. Through its Chairman/Secretary
At Present, Flat No.41, 4th Floor, A
Wing, Nisarg Upavan Co-operative
Housing Society, Near Thane
Municipal Commissioner Bungalow,
Patlipada, Thane West.
- 4. THE DEPUTY DIRECTOR OF**
EDUCATION,
Mumbai Region, Mumbai.

...RESPONDENTS

FOR THE PETITIONER	Mr Vinayak Kumbhar, <i>i/b AN Bandiwadekar.</i>
FOR RESPONDENT No.1-STATE.	Mr NC Walibe, AGP.
FOR RESPONDENT No.2	Mr Mandar Limaye.

JUDGMENT (Per Neela Gokhale J):-

1. **Rule.** The 2nd Respondent has filed an Affidavit in Reply. The Petition has been dismissed against the 3rd Respondent by Order dated 21st October 2022 for failure to take steps in effecting service against it. By consent of parties, rule is made returnable forthwith.
2. The Petitioner assails the refusal by the 4th Respondent to grant approval to his appointment as a Shikshan Sevak in a primary school run by the 3rd Respondent. He also seeks release of grant in aid for payment of monthly honorarium towards his service as Shikshan Sevak and further salary as applicable pay-scales to the post of full time Assistant Teacher in the school. The 2nd and the 4th Respondents are the Education Officer and the Deputy Director

of Education respectively of the 1st Respondent State of Maharashtra.

3. Brief facts of the case are that the Petitioner was appointed as a Shikshan Sevak in the primary school of the 3rd Respondent from 12th June 2006 for a period of three years. The appointment was purely temporary in nature. The tenure of three years was also the probation period. The 3rd Respondent-Management sought approval for the Petitioner's appointment, by submitting a proposal to the Education Officer. There was no response. The Petitioner also made several representations to the Education Department requesting an expeditious approval to his appointment. No approval was forthcoming. Ultimately, the Headmaster of the school terminated the Petitioner's services for lack of approval.

4. Simultaneously, the Management appointed one Dilip Dighe as a Shikshan Sevak, followed by his appointment as Assistant-Teacher.

5. Aggrieved by his own termination and the appointment of Dilip Dighe by the Management, the Petitioner made several complaints to the Education Department. A complaint was also made to the Maharashtra State Scheduled Castes/Scheduled Tribes Commission, Bombay in this regard. Some directions appear to have been given by the Commission, but that is not a concern in the present petition.

6. In the meantime, the school itself closed in the year 2015 and three teachers employed with the school were declared as surplus. The Education Department refused approval to the Petitioner's appointment since the school itself ceased operations. It is this refusal dated 30th November 2017 which is assailed by the Petitioner.

7. Mr Kumbhar appears for the Petitioner. It is his contention that the Petitioner, being a candidate from a scheduled caste, was appointed on a reserved vacancy and as such was entitled to be approved on the post. He contests the appointment of Dilip Dighe said to be to a vacant post, on the ground that of the four sanctioned posts, two were for reserved category and the remaining two were for open category candidates. Therefore, he submits, the school could not have appointed Dilip Dighe to a reserved post. Mr Kumbhar further complains that had the Education Department approved his appointment as Shikshan Sevak at the relevant time, he would have been working in the school at the time of its closure and would have been declared surplus and absorbed in another aided primary school. He thus challenges the refusal of approval of his appointment.

8. Mr Walimbe, Learned AGP, appears for the State and Mr Mandar Limaye represents the Education Officer. Mr Limaye contests the relief on a simple ground that the school is closed with effect from June 2015 and there is no question of approval of any appointment. He further points out that the Petitioner was in any case on a probation period without approval and his appointment was on a purely temporary basis. He concedes that the appointment

of Dilip Dighe by the management was illegal. The Management was directed to take action against Dighe, who himself was a member of the Management. It is a fact that there is neither approval to the appointment of the Petitioner nor to that of Dilip Dighe. Both Mr Walimbe and Mr Limaye thus seek dismissal of the Petition.

9. Admittedly, the school has closed its operations since June 2015. The Petitioner's appointment as Shikshan Sevak in 2006 was in the unaided division and was purely of a contractual nature. The undertaking of the Petitioner accepting such appointment is on record. There is no approval from the Education Department. This led to his termination in the year 2009. The Petitioner has not worked in the school since 2009.

10. There is no explanation for the delay on the part of the Petitioner in approaching the Court and seeking relief within a reasonable period. He has not even challenged his termination before the School Tribunal or any other jurisdictionally competent court or tribunal. The present Petition has been filed after a long delay of as many as nine years after his termination. It is settled law that a belated approach in filing Writ Petition is impermissible and an inordinate delay such as this is fatal to the relief sought. It is obligatory for a litigant invoking the extraordinary jurisdiction of a Writ Court to come to the Court at the earliest or at least within a reasonable time.

11. The closure of the school in the interregnum, in any case, has render impossible the relief sought in the Petition.

12. Notwithstanding that the Petitioner has many complaints against Dilip Dighe, that person has not been arrayed as party-respondent to the petition.

13. It is also a matter of record that the Petition stands dismissed as against the 3rd Respondent-Management. Hence no directions are possible against either the Management or Dilip Dighe. No steps are seen to be taken to recall the order of dismissal of the Petition against the 3rd Respondent (and that dismissal was on account of a failure of service). Thus, we are unable to issue any directions to the 3rd Respondent in respect of release of arrears of salary, if any, due to the Petitioner against the management; apart from the fact that we find no cause to do so.

14. We specifically asked the Counsel for the Petitioner as to the employment status of the Petitioner post his termination in 2009. After some hesitation, and on instructions from the Petitioner who was present in Court, we were informed that he has undertaken alternative employment.

15. In view of the foregoing discussions, we are of the considered view that the petition is misconceived. No purpose will be served by setting aside the refusal order passed by the Education Officer dated 30th November 2017. There is no gainsaying that the Petitioner would have been declared surplus had he been in employment at the

time of closure of the school. His appointment was neither regularised nor made permanent. In fact, his services stood terminated, which termination order till date remains unchallenged.

16. In these circumstances, there is no merit in the Petition. It is dismissed. Rule is discharged. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)

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