

Anand

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

WRIT PETITION NO. 14801 OF 2023

Jaywant Gulabrao Nimbalkar

.Petitioner

Vs.

The Education Officer (Secondary), Pune & ors.

.Respondents

Ms. Rekha Musale, Advocate, for the Petitioner

Mr. P. G. Sawant, AGP, for Respondent No. 1 – State

Mr. Venkatesh Shinde, Advocate, for Respondent Nos. 2 & 3

CORAM : MADHAV J. JAMDAR, J.

DATE : 15.12.2023

ORAL JUDGMENT

1. Heard Ms. Musale, learned counsel appearing for the Petitioner, Mr. Sawant, learned AGP appearing for Respondent No. 1 – State and Mr. Shinde, learned counsel appearing for Respondent Nos. 2 & 3.

2. By the present Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 26.06.2022 passed by the Education Officer(Secondary), Zilla Parishad, Pune, by which a proposal submitted to the Education Officer pursuant to the Order dated 17.02.2021 passed by a learned Single Judge of this Court (Coram : M. S. Karnik, J.) in W. P. No. 9237 of 2019 was

rejected. A perusal of the order dated 17.02.2021 shows that the Petitioner was appointed as a Junior Clerk on 09.06.1997 and thereafter, appointed as a Shikshan Sevak in the year 2008. The services of the Petitioner were terminated in the year 2011. The termination of services were challenged before the School Tribunal. The School Tribunal dismissed the Appeal. The learned Single Judge of this Court by Order dated 17.02.2021 modified the Order passed by the School Tribunal by directing that the Petitioner be reinstated as Junior Clerk with effect from 01.06.2021 and further directed that the Petitioner will be entitled for salary and other benefits with effect from 01.06.2021. Further directions which are relevant for disposal of the present Petition are given in paragraphs 5 and 6 of the said Order of the learned Single dated 17.02.2021. The said paragraphs 5 & 6 read as under :-

*“5. Learned Counsel for Respondents No. 1 & 2 submitted that the salary grant proposal made to the Respondent No. 3 may be considered. **Learned AGP says that the post where the Petitioner is to be reinstated is not eligible for grant-in-aid. These are the issues to be considered by the Education Officer when the proposal is submitted. The contention as to whether Petitioner’s post is entitled to salary grant is kept open to be considered by the Education Officer. The Petition is partly allowed in the above terms.***

*6. It is open for the Management to submit a proposal to the Education Officer. So far as claim for continuity of service and salary grant from 01/06/2021 is concerned, the same shall be considered on its own merits and in accordance with law. **The Petitioner is personally present in the Court and agrees for reinstatement as Junior Clerk with effect from 01/06/2021 and that he would forego the claim as Shikshan Sevak & backwages.**"*

(Emphasis added)

3. It is the contention of Ms. Musale, learned counsel appearing for the Petitioner on the basis of record maintained by the Education Officer(Secondary) – Respondent No. 1 (page No. 76 of the Writ Petition) that there is one post of Junior Clerk and the said post is aided. Pursuant to the order dated 17.02.2021, Respondent Nos. 2 & 3 i. e. Management submitted that the proposal was sent to the Education Officer and same has been rejected by Order dated 21.06.2022. The impugned order shows that the reason given is that reservation policy is not followed by the management. However, perusal of the Order dated 17.02.2021 of the learned Single Judge shows that the only objection raised was the said post is not eligible for grant-in-aid. The impugned order was not passed on that ground. In fact, record of the Education Officer(Secondary) (Page No. 74 of the

Petition) clearly shows that the post of Junior Clerk is aided. Respondent No. 1 has filed affidavit-in-reply dated 13.12.2023 re-iterating stand which is stated in the impugned order. However, same is contrary to the directions dated 17.02.2021 issued by the learned Single Judge of this Court. Accordingly, the Writ Petition deserves to be allowed.

4. The Writ Petition is disposed of by issuing the following directions.

O R D E R

(i) The order dated 21.06.2022 passed by the Education Officer(Secondary), Zilla Parishad, Pune (Exh.'R') is quashed & set aside;

(ii) The proposal dated 02.06.2021 submitted by the Respondent Nos. 2 & 3 is directed to be processed in accordance with the observations made in this order as well as in the order dated 17.02.2021 passed by a learned Single Judge of this Court in W. P. No. 9237 of 2019. Same be done within a period of eight weeks from today and consequently, the Petitioner's name be included in Shalarth ID.

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

(MADHAV J. JAMDAR, J.)