

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 1998 OF 2018

Shri Yadorao tulshiram Umak,
 aged about 41 years,
 Occ. Assisant Teacher,
 R/o. At Post Akoli, Tahsil Kuhi,
 District Nagpur

.....PETITIONER

..V E R S U S..

1. State of Maharashtra
 Through its Secretary,
 Tribal Development Department,
 Mantralaya, Mumbai 32

2. The Commissioner,
 Tribal Development Department,
 Maharashtra State, Nashik

3. Additional Commissioner,
 Tribal Development Department,
 Near R.T.O. Office, Nagpur

4. Project Officer,
 Integrated Tribal Development
 Project, Chandrapur

5. Wasnik Shikshan Sanstha,
 Through its President, Chikhal,
 Tahsil and District Bhandara,

6. C.S.W. Grant In Aid Ashram School(deleted as per order
 through its Headmaster, Pahela, dtd.18.2.2020)
 Tahsil District Bhandara

..RESPONDENTS

 Mr. Anand Parchure, counsel for petitioner.
 Mr. S.N. Ukey, Addl. GP for respondents 1 to 4/State.
 Mr. Ashwin Deshpande, counsel for respondent 5.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 27.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard with consent of the parties.

3. The challenge is to the order dated 3.4.2017, issued by respondent 3 - Additional Commissioner, Tribal Development Department, Nagpur, refusing to approve the appointment of the petitioner as Trained Primary Assistant Teacher.

4. Facts, to the extent relevant, may be summarized thus:

Petitioner holds the qualification of B.A. M.A. and claims to have acquired the D.Ed. qualification through the postal course in the month of July, 2015. The petitioner contends that he is eligible and qualified to be appointed as Trained Assistant Teacher.

Petitioner contends that one post of Shikshan Sevak was vacant at the Ashram School which is managed by respondent 5 – Society, and which was aided by the Social Welfare Department. The petitioner claims to have been appointed as

Untrained Primary Assistant Teacher with effect from 29.6.2006, after following the due process of law.

The petitioner contends that he joined services on 23.7.2006 and since then was/is in continuous service. The Management forwarded proposal seeking approval to the appointment of the petitioner, which the appropriate authority granted on 16.4.2007.

Petitioner further submits that he could not obtain the D.Ed. qualification within five years. The petitioner further submits that he was granted permission to pursue the postal D.Ed. course. The petitioner appeared for the D.Ed. examination and was declared successful in July, 2015. The petitioner contends that the Project Officer, Integrated Tribal Development Project, Chandrapur also granted the permission to the petitioner to acquire the D.Ed. qualification by pursuing the postal course, pursuant to which permission, he successfully completed the course as noted supra. The petitioner has placed on record communication dated 30.8.2014 issued by the Project Officer to substantiate the said averment.

The petitioner submits that there was a phase in his life during which he was disturbed in view of untimely demise of his spouse. The petitioner had a small child to look after. The

petitioner contemplated quitting employment and submitted resignation on 15.12.2010. According to the petitioner, the resignation was not accepted, and was withdrawn. The petitioner claims to have discharged duties as usual from 26.2.2012.

The petitioner contends that after he started discharging duties regularly, although not required to do so, the Management submitted proposal seeking approval vide letter dated 3.2.2012 and then again vide letter dated 12.12.2014 which respondent 4 – Project Officer forwarded to the Additional Commissioner. It is this proposal dated 12.12.2014 which is rejected by the Additional Commissioner vide order impugned dated 3.4.2017.

5. It appears that the earlier proposal was till 2011, and it was for this reason that the Management considered it appropriate to forward proposal afresh, seeking approval to the appointment of the petitioner. Be that as it may, we are not required to delve deeper in that aspect. The controversy lies in a narrow compass. The only ground on which the authority has refused approval is that having submitted resignation on 15.12.2010, in view of the Circular dated 2.12.1997, the relationship between the employee and the employer *ipso facto* snaps after the expiry of 30 days.

6. We are not inclined to be persuaded by the reason given for rejection of the approval for reasons more than one. In the first place, nothing is brought to our notice to suggest that the Circular dated 2.12.1997 which on the face of it governs the government employees of the Tribal Development Department, applies to the teachers, who are working with the Ashram Schools in the absence of any Circular or Government Resolution making the said Circular applicable to such employees. The other aspect of the matter, is that the Management did not treat the contract of employee as severed, and nor did the then Project Officer. Sufficient material is placed along with the petition to suggest, that the petitioner has not only discharged duties with the knowledge of the Project Officer, the petitioner was permitted by the Project Officer to undergo the postal D.Ed. course.

7. It would be safe to proceed on the premise that the petitioner was in continuous employment with the result that the approval to the appointment could not have been rejected. We have not examined, and we are not called upon to examine, the entitlement of the petitioner to the salary for the period during which he has not, as a fact, discharged duties. However, we note that it is common ground that the Ashram School stands

de-recognized with effect from 3.2.2017. If that be so, the petitioner shall be entitled to absorption, as per his seniority. Needless to observe, since we have found that the approval is wrongly rejected, the seniority of the petitioner shall be determined on the basis of the initial appointment in the Ashram School.

8. The order impugned is quashed.

9. Considering that the Ashram School is de-recognized, we are not inclined to remit the matter to the concerned authority, which course we would have ordinarily followed.

10. We direct that the petitioner shall be treated as an approved teacher and shall be extended the benefit of the absorption, and any consequential benefit, on the basis of his seniority which shall be determined on the basis of the date of the initial appointment in service.

11. The petition is allowed in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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