

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.2076 OF 2021

Falendra s/o Chopsingh Rahangdale

.. Petitioner

versus

State of Maharashtra, through its Secretary,
School Education Department, Mantralaya,
Mumbai and three others.

..Respondents

Shri I. N. Choudhari, Advocate for petitioner.

Shri Amit Madiwale, Assistant Government Pleader for respondent Nos.1
and 2.

Shri R.M.Wasnik, Advocate for respondent Nos. 3 and 4.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 25th JULY, 2023

P. C.

Heard.

2. The challenge raised in the present writ petition is to the communication dated 20.09.2022 that has been issued by the respondent No.1 refusing to approve the appointment of the petitioner on the post of 'Junior Clerk'.

3. It is the case of the petitioner that he came to be appointed on the post of 'Junior Clerk' at the respondent No.4-School run by the respondent No.3-Society. The initial appointment was on probation for a period of three years. According to the petitioner, proposal seeking approval to the appointment of the petitioner was submitted on 30.08.2010 after which a representation was made to the Education Officer (Secondary) to grant such approval. By the communication dated 01.12.2015 the

Education Officer (Secondary) sought guidance from the State Government in the said matter. In the said communication, it was stated that the post in question being an additional post, permission of the State Government for filling in the same was necessary. In absence of such permission, approval was not liable to be granted. Clarification in this regard was thus sought. Since no decision thereon was taken for a considerable time, this writ petition was filed on 03.03.2021 praying that such decision be taken on the proposal for grant of approval. By the order dated 08.09.2022 the respondent No.1 was directed to communicate its response to the communication dated 01.12.2015 issued by the Education Officer (Secondary). On 20.09.2022 the respondent No.1 communicated that since the appointment of the petitioner was without seeking permission of the State Government, approval could not be granted. By amending the writ petition, the communication dated 20.09.2022 has been challenged.

4. We have heard the learned counsel for the parties and we have perused the documents on record as well as affidavit-in-reply filed by the respondents. It is pertinent to note that the respondent No.4-Head Master had by communication dated 08.03.2010 sought permission of the Education Officer (Secondary) for filling in four posts including the post of Junior Clerk that is held by the petitioner. By the communication dated 15.03.2010 the Education Officer (Secondary) informed the Head Master that since the said four posts were being created for the first time, it was necessary to obtain permission of the State Government for filling in the said posts. With regard to sanction to the basic posts, the proposal for the

entire district was required to be considered. For that reason, the Education Officer (Secondary) by the aforesaid communication refused to grant such permission to fill in the posts. After receiving this communication, the Management as well as the Head Master through their counsel issued another letter on 30.03.2010 again seeking approval to fill in the said posts. The Education Officer (Secondary) on 29.04.2010 reiterated the stand that permission to fill in the said posts could not be granted in the absence of permission of the State Government. Despite aforesaid, the petitioner came to be appointed as 'Junior Clerk' pursuant to advertisement dated 10.05.2010. It is thus clear that despite the communications dated 15.03.2010 and 29.04.2010 issued by the Education Officer (Secondary) clearly stating that prior sanction of the State Government was necessary for filling in the post in question, the petitioner came to be recruited without the prior sanction. It is for this reason that the State Government by the impugned communication dated 20.09.2022 has refused to grant approval to the appointment of the petitioner.

5. We do not find that there is any illegality committed by the respondents resulting in issuance of the communication dated 20.09.2022. Since the petitioner has been appointed without obtaining prior permission of the State Government, the refusal to grant approval is justified. In the light of the fact that the earlier communications dated 15.03.2010 and 29.04.2010 continued to operate when the petitioner was appointed, the ratio of the decision in Writ Petition No.6539 of 2019 (*Ku. Veena d/o Guruprasad Thakur vs. State of Maharashtra through Secretary, Tribal*

Development, and others) decided on 15.12.2022 cannot be applied to the facts of the present case. The writ petition is thus dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.