



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

WRIT PETITION NO. 1459 of 2021

Nilesh Kesharao Khope,
Aged about 38 years, Occupation-Service,
R/o. At Kakad Shivni, Post Kherda (Bk),
Tq. Karanja, District Washim.

..... **PETITIONER**

..V E R S U S..

1. State of Maharashtra,
through its Secretary, School Education Department
Mantralaya, Mumbai-400 032.
2. Sant Zole Baba Magas Jati/Jamati
Adiwasi Tatha Durbal Ghatak Sarwangin
Vikas Mandal, through its President Wai (Karanja),
Tq. Karanja, District Washim.
3. Head Master,
Shree Babasaheb Dhabekar Madhyamik Va Uccha
Madhyamik Vidyalaya, Kakad Shivni,
Tq. Karanja (Lad), District Washim.

4. Education Officer (Secondary),
Zilla Parishad, Washim, District Washim

..... **RESPONDENTS**

Ms Geeta Tiwari, Advocate for petitioner.

Shri S.A.Ashirgade, Additional Government Pleader for respondent nos. 1
and 4.

Ms Himani Kavi, Advocate for respondent nos.2 and 3.

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

DATE :- 15th SEPTEMBER, 2023

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised by the petitioner is to the order dated 03.02.2020 thereby refusing to grant approval to the appointment of the petitioner on the post of 'Peon' at the respondent no.3-School run by the respondent no.2-Society. In the impugned order, the reasons for refusal to grant the approval are indicated to be imposition of ban during the relevant period on recruitment of non-teaching staff, absence of staff justification and roster point indicating the entitlement of the petitioner.

3. It is not in dispute that the petitioner's service were terminated on 24.07.2019. The petitioner had challenged the order of termination under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act of 1977). That appeal was allowed on 21.12.2019 and the order of termination was set aside. While answering issue no.2 the School Tribunal recorded a finding that the appointment of the petitioner was in accordance with Section 5 of the Act of 1977. The Education Officer (Secondary) was a party to the said appeal and hence the findings recorded in the said appeal would be binding on the Education Officer (Secondary).

Insofar as the aspect of sanction of staff is concerned, the learned counsel for the respondent nos. 2 and 3 submits that the relevant documents are available on record and the same can be verified by the Education Officer (Secondary). Similarly, the issue of there being any ban on

recruitment would not now arise since the petitioner's appointment has been found to be legal.

4. In the aforesaid facts, we find that the issue with regard to grant of approval to the appointment of the petitioner requires re-consideration. For this reason the order dated 03.02.2020 is set aside. The Education Officer (Secondary) is directed to re-consider the said proposal in accordance with law. It is clarified that the issue with regard to the legality of the petitioner's appointment shall not be gone into since that issue has been considered by the School Tribunal and the petitioner's appointment has been held to be legal and proper. After considering the relevant documents with regard to sanction of staff, the Education Officer (Secondary) shall decide the said proposal. The petitioner as well as the respondent nos. 2 and 3 are directed to appear before the Education Officer (Secondary) on 05.10.2023 with all relevant documents. Within a period of four weeks from the date of appearance of parties, the proposal shall be decided. Decision taken shall be communicated to the parties.

5. Rule is disposed of in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.