

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

WRIT PETITION NO.5228 OF 2018

Petitioners : 1] Shikshan Prasarak Mandal,
Wadegaon, Tq. Balapur, Distt. Akola,
through its President.
2] Head Master,
Shri Jageshwar Vidyalaya, Wadegaon,
Tah. Balapur, District Akola.
3] Mr. Sudhakar s/o Mahadeo Thakare,
Aged about 37 years, Occ. Service,
R/o At Post Degaon, Tq. Balapur, Distt. Akola.
– Versus –

Respondents : 1] Deputy Director of Education,
Amravati Division, Amravati.
2] Education Officer (Secondary),
Zilla Parishad, Akola.

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Shri S.R. Bhatkhore, Advocate for the Petitioners.

Shri S.M. Ukey, Additional Government Pleader for the Respondents.

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CORAM : **ROHIT B. DEO AND Y.G. KHOBRAGADE, JJ.**

DATE : **17th FEBRUARY, 2023.**

J U D G M E N T : (Per Y.G. Khobragade, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

02] By the present writ petition, the petitioners invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and

pray for quashing and setting the order dated 29/06/2018 passed by respondent No.1-Deputy Director of Education, Amravati Division, Amravati whereby respondent No.1 cancelled approval dated 30/03/2013 granted by the Education Officer (Secondary), Zilla Parishad, Akola and approval of pay scale granted on 30/10/2013 on the ground that the appointment of petitioner No.3 is made within the prohibited period.

03] It is not in dispute that petitioner No.1 – Shikshan Prasarak Mandal, Wadegaon is a society registered under the provisions of the Societies Registration Act, 1860 and runs petitioner 2-School, which receives 100% grant-in-aid from the State exchequer. One Shri Kashinath Mahadeo Banait voluntarily retired from the post of peon with effect from 31/07/2002 and since then the post of peon was lying vacant. The roster of petitioner No.1-Management has been verified by the Assistant Commissioner (BC Cell), Amravati Division, Amravati on 29/09/2009. As per the staffing pattern approved by respondent No.2 on 17/09/2009 for the academic year 2008-09 and 2009-10, seven posts of peon were sanctioned to respondent No.2-School. Petitioner Nos.1 and 2 submitted a proposal with respondent No.2 Education Officer (Secondary) Zilla Parishad, Akola seeking permission to fill up the post of peon on 06/01/2010 and the same has been granted by respondent No.2 to

fill up the post of peon vide letter dated 17/05/2010. In view of the said permission, petitioner Nos. 1 and 2 published an advertisement for filling up the post of peon from open category in daily newspaper “Sakal” and “Deshonnati” on 14/06/2010 and invited eligible candidates for interview on 19/06/2010. Accordingly, petitioner No.3 and other candidates appeared for interview on 19/06/2010. After the interview, the School Committee of petitioner No.2 passed a resolution and selected petitioner No.3 for the post of peon. Accordingly, petitioner No.2-Headmaster of the School issued appointment order dated 19/06/2010 in favour of petitioner No.3 for the period of three years with effect from 21/06/2010. Thereafter, petitioner No.2 submitted a proposal for approval of the appointment of petitioner No.3 with respondent No.2- Education Officer (Secondary), Zilla Parishad, Akola on 20/03/2021. Respondent No.2 granted approval to the appointment of petitioner No.3 vide order dated 30/03/2013 for the period from 21/06/2010 to 20/06/2013. Further on 30/10/2013, respondent No.2 also granted approval and placed petitioner No.3 in time scale pay. However, on 07/03/2017, respondent No.2 issued a notice and directed the petitioners to remain present on 18/03/2017 in its Office in respect of obtaining individual approval for the post of peon. Accordingly, on 18/03/2017, petitioner No.2 submitted his written reply contending that the appointment of petitioner

No.3 was made after following due procedure of law and since petitioner No.3 completed probation period of three years, he acquired status of permanent employee. However, on 07/07/2017, respondent No.2 – Education Officer (Secondary), Zilla Parishad, Akola passed impugned order and cancelled approval to the appointment of petitioner No.3 as per the Government Resolution dated 10/06/2017. Therefore, petitioner No.3 had challenged said order in Writ Petition No.5189/2017 before this Court. On 10/10/2017, the coordinate Bench of this Court was pleased to pass an order thereby allowing the said petition in the line of judgment dated 14/09/2017 in Writ Petition No.3057/2017.

04] In view of the said order dated 10/10/2017 passed by this Court, the petitioners submitted written submission/reply with respondent No.1 (Annexure-M) contending that after the permission granted by respondent No.2, the appointment of petitioner No.3 was made after following due process of selection with effect from 21/06/2010 and petitioner No.3 completed three years probation period. Therefore, the appointment of petitioner No.3 is not in contravention of Government Resolution dated 02/05/2012 since the appointment of petitioner No.3 is prior to coming into force of Government Resolution dated 02/05/2012.

05] The learned Additional Government Pleader Mr. Ukey submitted that respondent No.1 received several complaints about granting illegal approval by the Education Officer – Respondent No.2 in collusion with the Managements. Therefore, the Commissioner (Education) verified the approvals of several appointments, which were made without following due process of law. The Commissioner (Education) directed the concerned to issue notices to the concerned Education Officers, Management, Teaching and Non-Teaching staff members and after hearing, to pass appropriate orders in the light of Government Resolution dated 06/02/2012. Since the appointment of petitioner No.3 by petitioner Nos.1 and 2 was found illegal to which the approval was granted, therefore, after providing opportunity of hearing to the petitioners on 07/07/2017, respondent No.2 passed an order and cancelled the individual approval of the petitioner No.3 as per the Government Resolution dated 10/06/2012. Being aggrieved, petitioner No.3 preferred Writ Petition No. 5189/2017, which was allowed by this Court in view of the order dated 14/09/2017 passed in Writ Petition No.3057/2017. Thereafter, respondent No.1 granted hearing to the petitioners and after considering the written reply, respondent No.1 passed the impugned order by holding that as per the Government Resolution date 16/02/2012, the State Government imposed ban on recruitment of teaching and non-teaching staff and since

appointment of petitioner No.3 was made during the said period, the approval granted by respondent No.2 on 30/03/2013 and the time pay scale granted on 30/10/2013 were revoked.

06] The learned Additional Government Pleader further submitted that since the State Government imposed ban for the appointment of teaching and non-teaching staff in the secondary and higher secondary school with effect from 05/06/2010 for the period of one year and those restrictions were extended for further period of one year vide Government Resolution dated 16/11/2021, petitioner Nos.1 and 2 could not have appointed petitioner No.3 in contravention of the said Government Resolution and respondent No.2 illegally granted approval to the appointment of petitioner No.3. Therefore, the impugned order passed by respondent No.1 is just and proper.

07] It may be noted here that, 100 point roster of petitioner No.2 school was approved by the Assistant Commissioner (BC Cell), Amravati on 29/09/2009. As per the staffing pattern approved by respondent No.2 on 17/09/2009 for the academic year 2008-09 and 2009-10, seven posts of peons were sanctioned for respondent No.2 School. It is not in dispute that one Kashinath Banait voluntarily retired from the post of peon with effect from 21/07/2002 and one post of peon was lying vacant. On 06/01/2010,

petitioner Nos.1 and 2 submitted proposal with respondent No.2-Education Officer and sought permission to fill up the post of peon, which has been granted on 17/05/2010 by respondent No.2. Thereafter, the petitioner Nos. 1 and 2 published an advertisement in the local newspaper to fill up remaining vacancy of peons and after the due selection process, petitioner No.3 was appointed with effect from 21/06/2010 on probation for the period of three years, which has been approved by respondent No.2. Therefore, the appointment of petitioner No.3 to the post of peon cannot be said to be in contravention of Government Resolution dated 10/06/2010, which has been extended vide Government Resolution dated 16/11/2011.

08] So also, on completion of probation, respondent No.2 granted approval in time scale to petitioner No.3 vide order dated 30/10/2013. No doubt, on 10/06/2010, the State Government issued Government Resolution and imposed ban on recruitment of teaching and non-teaching staff for the period of one year, which has been extended again for one year vide Government Resolution dated 16/07/2011. However, in case in hand, the appointment of petitioner No.3 was made after permission granted by respondent No.2 on 17/05/2010 after publishing an advertisement and following selection process. The school committee passed the resolution on

19/06/2010 and appointed petitioner No.3 with effect from 21/06/2010, which cannot said to be illegal, because appointment of petitioner No.3 made pursuant to recruitment initiated before Government Resolution dated 10/06/2012. However, respondent No.1 passed impugned order dated 29/06/2018 without considering the fact that the post of peon was lying vacant with petitioner No.2 school with effect form 31/07/2002 on voluntary retirement of Shri Kashinath Banait and said appointment was with prior permission of respondent No.2. Therefore, the impugned order is liable to be quashed and set aside. Hence, the following order.

ORDER

- I. The writ petition is allowed.
- II. The impugned order dated 29/06/2018 issued by the respondent No.1 is hereby quashed and set aside.
- III. Rule is made absolute in the above terms with no order as to costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO, J.)

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