



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.267 OF 2022

Pruthviraj Kisan Mote
Age: 27 years, Occu.: Service,
R/o. Girwali, Tq. Bhoom,
Dist. Osmanabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Government of Maharashtra,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary)
Zilla Parishad, Osmanabad.
3. The Headmaster,
Dr. Padmasinh Patil High School,
Deolali, Tq. Bhoom, Dist. Osmanabad.

.. RESPONDENTS

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Mr. C. K. Shinde, Advocate for the petitioner.
Mr. S. K. Shirse, AGP for respondent Nos.1 and 2 – State.
Mr. N. N. Bhagwat, Advocate for respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 1st March, 2024.
PRONOUNCED ON : 14th March, 2024.**

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates
for the appearing parties finally by consent.

2. The petitioner challenges the order passed by respondent No.2 Education Officer (Secondary), Zilla Parishad, Osmanabad dated 29.12.2021, thereby refusing the approval to the appointment of the petitioner as Junior Clerk in respondent No.3 School.

3. The petitioner has come with the case that he came to be appointed as Junior Clerk in respondent No.3 School, which runs under the administration of one Banganga Public Charitable Trust. One Ramesh Kisanrao Supekar, who was serving as Junior Clerk in the said school, retired on superannuation on 31.08.2021. Therefore, the said post become vacant. There was only one post of Junior Clerk admissible in the school. Therefore, on his retirement, the administration of the school got hampered and, therefore, the school management was constrained to fill up the said vacancy. The school management had applied for permission to respondent No.2 to advertise for the said post. There were no surplus Junior Clerks in Osmanabad district at that time. Respondent No.3 School was a recognized secondary school and receiving 100% grant. Under the said circumstance, the school management had published advertisement in local newspaper "Dainik Kulaswamini" on 19.10.2021. Thereupon, after the due procedure, the petitioner came to be appointed from 27.10.2021. Thereafter, the school management had sent a proposal to respondent No.2 seeking approval to his

appointment. However, it has been refused. The petitioner says that his appointment is not violating any of the Government Resolutions and, therefore, the approval ought to have been granted.

4. Affidavit-in-reply has been filed by one Gajanan Sugdeo Susar, the then Education Officer (Secondary), Zilla Parishad, Osmanabad on behalf of respondent No.2, wherein he does not dispute the facts, however, he says that Government of Maharashtra had passed Resolution on 12.02.2015 and decided to fix the revised non-teaching employees staffing pattern of 100% aided and partially aided Secondary, Higher Secondary Schools and Sainiki Schools. It was stated that till the said revised staffing pattern is declared, no fresh appointment should be made. Thereafter, as per Government Resolution dated 28.01.2019, the government has fixed the revised staffing pattern and by Government Resolution dated 07.03.2019, the government has laid down the norms to the posts which are lapsed and become surplus. He then states that the Government of Maharashtra had directed the Director of Education, Secondary and Higher Secondary, Maharashtra State, Pune to allot/sanction the admissible posts as per the guidelines issued at Clause No.1 in Government Resolution dated 07.03.2019 and as per the norms laid down in Government Resolution dated 28.01.2019. If the posts are sanctioned or created without following the procedure in the

Government Resolutions, then those posts will not be treated as legal or valid or admissible. According to him, as per the policy prevailing, approval to the post of petitioner as Junior Clerk cannot be granted and, therefore, the rejection is proper.

5. Affidavit-in-reply has also been filed by respondent No.3 in support of the petition.

6. Heard learned Advocate Mr. C. K. Shinde for the petitioner, learned AGP Mr. S. K. Shirse for respondent Nos.1 and 2 – State and learned Advocate Mr. N. N. Bhagwat for respondent No.3. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions. We have perused the documents on record.

7. At the outset, it is to be noted that on the factual aspects as pleaded by the petitioner, there is no denial, that means it is admitted that the management had sought permission to fill up the posts which had become vacant after the retirement of earlier Junior Clerk Mr. Ramesh Kisanrao Supekar on 31.08.2021. The petitioner's Advocate has produced copy of the said application dated 03.09.2021 given by the Secretary of the Trust to the Education Officer (Secondary), Zilla Parishad, Osmanabad. It is having acknowledgment of the same day from the office of the said authority. We must

understand that there was only one post sanctioned as Junior Clerk in respondent No.3 School. Without a clerk, the school cannot definitely function. Therefore, it appears that as per the procedure the Trust had made the said application on 03.09.2021 after the earlier clerk stood retired. When there is acknowledgment given by respondent No.2, then there ought to have been an explanation in the affidavit-in-reply filed on behalf of respondent No.2 as to why there was no response. He had neither granted the approval, nor rejected it. It appears that he had simply kept quiet. Therefore, we would like to rely on the decision of this Court in **Gopal Siddheshwar Akhade and Ors. Vs. State of Maharashtra and Ors., [MANU/MH/2590/2013]**. The observations from the said decision are that when the respondent authorities had not responded to the application seeking permission to fill up the post and thereupon published an advertisement and went ahead with the interview and selected a candidate, then the appointments which are made are required to be held to be as per procedure. Here, in this case, respondent No.2 is not seriously disputing the procedure that was undertaken at the time of appointment of the petitioner. According to respondent No.2, the post on which the petitioner has been appointed would become admissible newly, only after the norms specified in Government Resolution dated 28.01.2019 are followed, that means, there should be the exercise of absorption of surplus employees. As regards this reason is concerned, again coming back to

the application for filling up the post dated 03.09.2021, it can be said that it specifically states that there are two posts vacant at two different schools run by the institution and information regarding the same was given to the Education Department earlier i.e. prior to 03.09.2021, but no response was given to fill up of those posts. That means the letter dated 03.09.2021 is a subsequent letter. Even in respect of this letter, there is no response as the surplus employee was not made available and, therefore, ultimately the advertisement appears to have been published on 19.10.2021. A specific statement is also made in the petition that there was no surplus employee available in entire Osmanabad district when the petitioner came to be appointed. Respondent No.2 appears to have not taken data from the concerned department to show that how many employees were declared surplus in Osmanabad district between the period 31.08.2021 (when Ramesh Supekar stood retired) till 27.10.2021. Merely by quoting the Government Resolutions, it will not be sufficient for respondent No.2 to say that the appointments are subject to those Government Resolutions. Definitely, those Government Resolutions are binding, but then whether the situation was there, is a question. If no surplus employee was available and there is no response to the letter dated 03.09.2021, then certainly we can say that the appointment of the petitioner is legal. Now, even as regards the new staffing pattern, if the number of students is less than 500, certainly one junior clerk

would be permissible, otherwise the school cannot run without the clerk. We, therefore, find this to be a fit case where we should exercise our constitutional powers. Hence, the following order :-

ORDER

I) The Writ Petition stands allowed in terms of prayer clauses 'B' and 'C'.

II) Respondent No.2 to grant approval to the appointment of the petitioner as Junior Clerk in respondent No.3 – School within a period of two months from today.

III) Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm