



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2826 OF 2023

Arun s/o Bhausahab Karlekar,
Age: 55 years, Occ: Service,
R/o. Chikhali, Tq. Shrigonda,
Dist. Ahmednagar.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Commissioner of Education,
Maharashtra State, Pune.
2. The Deputy Director of Education,
Pune Region, Pune.
3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
4. Shrigonda Taluka Krushiseva Sangh,
Chikhali Tq. Shrigonda Dist. Ahmednagar,
Through its President.
5. Mhase Madhyamic Vidyalaya,
At Mhase, Tq. Shrigonda,
Dist. Ahmednagar,
Through its Headmaster.

..Respondents

...

Mr. S. R. Kedar, Advocate for the Petitioner.

Mr. S. K. Shirse, AGP for Respondent Nos.1 to 3.

Mr. A. D. Sonkawade h/f Mr. A. V. Hon, Advocate for Respondent Nos.4
and 5.

...

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

JUDGMENT RESERVED ON :- 26th FEBRUARY 2024.

JUDGMENT PRONOUNCED ON :- 06th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India thereby impugning the order dated 08.03.2023 passed by respondent no.3 i.e. Education Officer (Secondary), Zilla Parishad, Ahmednagar by which the proposal for grant of approval to the appointment of the petitioner on the post of Junior Clerk has been rejected. Similarly, the petitioner seeks directions against respondent nos.3 to 5 to pay the salary since 13.05.2022 as per applicable pay scale.

3. The petitioner contends that he was appointed as Junior Clerk with respondent no.5 which receives grant-in-aid from the State. The petitioner worked from 21.11.2001 till 20.12.2007 when his services were terminated by oral order without there being any enquiry as contemplated under law. The petitioner assailed his otherwise termination before the School Tribunal at Solapur. The Tribunal after hearing the respective parties, allowed the Appeal vide order dated 19.12.2019 and directed respondent nos.1 to 3 therein to reinstate the petitioner on his original post and pay back-wages from the date of termination of his service. The respondent nos.4 and 5 assailed the Tribunal's order dated 19.12.2019 by filing Writ Petition No.1890/2020 before this Court. This Court after hearing the parties, dismissed the writ petition and confirmed the order passed by the Tribunal. Consequently, the petitioner was reinstated as Junior Clerk and reported on his duties on 13.05.2022. The respondent nos.4 and 5 moved proposal dated 20.05.2022 for grant of approval. The petitioner has also made representations for release of his salary to the respondents as well as the Commissioner of Education, Maharashtra State, Pune. The enquiry was conducted in pursuance of the

representations of the petitioner and it was concluded that the petitioner is entitled to receive salary and respondent nos.3 to 5 were supposed to initiate necessary action. However, they failed to take steps. The petitioner made one more representation dated 06.02.2023 for release of salary. However, by impugned communication dated 08.03.2023 respondent no.3-Education Officer (Secondary), Zilla Parishad, Ahmednagar refused to entertain the prayer of the petitioner giving two reasons, (i) The petitioner has approached this Court and his writ petition is pending and (ii) Mr. Anil Eknath Shinde has been appointed with effect from 01.11.2006 on the post of Junior Clerk, who has been unilaterally relieved by respondent-Management vide order dated 31.05.2022. Consequently, Mr. Anil Shinde approached the School Tribunal and said proceeding is subjudice. Consequently, the prayer for grant of approval to the petitioner is rejected and it is clarified that the Management shall be responsible for payment of his salary.

4. Mr. Kedar, learned Advocate appearing for the petitioner submits that admittedly the petitioner was appointed as Junior Clerk with respondent no.5-School with effect from 21.11.2001. His services were terminated by oral order of respondent-Management with effect from 20.12.2007. The petitioner had initially approached the Industrial Court challenging his otherwise termination. However, subsequently he approached the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Appeal was heard on merit. The Management, Education Officer as well as Mr. Anil Eknath Shinde were parties in Appeal before the Tribunal. After hearing all concerned, the otherwise termination dated 20.12.2007 was declared to be illegal and order of reinstatement of the petitioner with back-wages from the date of his termination was passed. The order of the Tribunal has attained finality after dismissal

of the Writ Petition No.1890/2020. Thereafter, the petitioner was reinstated in the service and proposal was made for approval. Mr Kedar, learned Advocate invites our attention to the order passed by the Joint Director of Education, wherein entitlement of the petitioner has been upheld and strictures are passed against the Divisional Deputy Director of Education, Pune. He would further point out that the impugned order dated 08.03.2023 passed by the Education Officer is contemptuous in nature.

5. Mr. Shirse, learned AGP appearing for respondent nos.1 to 3 supports the impugned order. Mr. Hon, learned Advocate appearing for respondent nos.4 and 5 submits that the Management had forwarded the proposal to the Education Officer. However, proposal for grant of approval is not sanctioned.

6. Having considered submissions advanced, it is apparent that this is a classic case where the authorities or Education Officer are reluctant to implement the orders of Judicial Authorities and still attempts to dig out reasons to withhold the benefit to the employee who suffered illegal termination and reinstated in terms of the order of the School Tribunal. It is apparent that, the termination order of the petitioner has been quashed and set aside and he is directed to be reinstated on the post of Junior Clerk alongwith back-wages. It is pertinent that the Education Officer is party to the proceeding before the School Tribunal. Even respondent no.4 Mr. Anil Eknath Shinde was party before the Tribunal. The order of the Tribunal was subjected to challenge before this Court in Writ Petition No.1890/2020. While dismissing the writ petition of the Management, this Court observed in paragraph no.18 that the Management had discriminated the petitioner and victimized him while making favour to respondent no.3 i.e. Mr. Anil Eknath Shinde.

7. In light of the aforesaid background when proposal was moved for reinstatement of the petitioner, the Education Officer sat over the proposal. The petitioner approached to the higher authorities i.e. Commissioner of Education, who observed that the Education Officer has unnecessarily delayed the grant of approval in favour of the petitioner and also proposed disciplinary action against the Education Officer. In spite of all this, respondent no.3-Education Officer passed the impugned order dated 08.03.2023, thereby declining grant of approval in favour of the petitioner. The Education Officer observed that the documents relating to the appointment of the petitioner and updated reservation roster is not produced alongwith proposal. Pertinently, the order passed by the Joint Director of Education after conclusion of the hearing dated 27.12.2022 clearly states that such objections are unwarranted and only requirement that Management was to submit the copy of the reservation roster.

8. Pertinently, initial appointment of the petitioner was in the year 2001 and his reinstatement is directed by the order of the School Tribunal, wherein all the aspects regarding availability of the vacancy and legality of the appointment of the petitioner has been considered. In that view of the matter, it is evident that the respondents-Authorities are bent upon to frustrate the directions of the Tribunal as confirmed by this Court. The impugned communication dated 08.03.2023 is apparently unjustified. The pendency of any proceeding at the behest of Mr. Anil Eknath Shinde has no relevance for the purpose of implementing the order passed by the School Tribunal and grant of approval in favour of the petitioner in view of the reasoned verdict in Appeal No.43/2016 and Writ Petition No.1890/2020.

9. Resultantly, we are inclined to allow the petition with costs of Rs.25,000/- (Rs. Twenty Five Thousand only), which shall be

recovered personally from respondent no.3-Education Officer (Secondary), Zilla Parishad, Ahmednagar. Hence, we proceed to pass the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned communication dated 08.03.2023 issued by the Education Officer (Secondary), Zilla Parishad, Ahmednagar is hereby quashed and set aside.
- c. The respondent no.3-Education Officer (Secondary), Zilla Parishad, Ahmednagar shall grant approval in favour of the petitioner in pursuance of the proposal forwarded by respondent nos.4 and 5. The respondent nos.3 to 5 are further directed to take necessary steps for release of salary of the petitioner in terms of order passed by the School Tribunal and continue to pay him salary as per his entitlement.
- d. The respondent no.3-Education Officer (Secondary), Zilla Parishad, Ahmednagar shall pay cost of Rs.25,000/- (Rs. Twenty Five Thousand only) to the petitioner within the period of four weeks from the date of this order and shall submit the report of compliance to this Court within a period of two weeks thereafter.
- e. Writ Petition is disposed of.
- f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE