



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

WRIT PETITION NO.7396 OF 2022

Raju s/o Govind Shingade,
age 38 yrs, Occ. Service,
R/o Kautewadi, Tq. Sangamner,
Dist. Ahmednagar. Petitioner.

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Secondary School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Shivshankar Vidya Prasarak Sanstha,
A/p Jawale Baleshwar, Tq. Sangamner,
Dist. Ahmednagar. Respondents.

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Mr. S.T. Shelke, Advocate for petitioner.
Mr. K S Patil, AGP for respondent nos.1 and 2.
Mr. S.S. Wagh, advocate for respondent no.3.

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CORAM	:	SMT. VIBHA KANKANWADI & S. G. CHAPALGAONKAR, JJ.
Reserved on	:	26 th April, 2024
Decided on	:	08 th May, 2024

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. Petitioner impugns the order dated 31.12.2014 passed by the Education Officer-Respondent no.2, thereby rejecting the proposal for grant of approval to the appointment

of the petitioner on the post of 'Shikshan Sevak.' Petitioner has further challenged the similar order dated 16.2.2022 passed on subsequent proposal dated 17.8.2021, seeking approval to his appointment in pursuance of the order passed by the School Tribunal in Appeal No.72 of 2015.

2. Mr. S.T. Shelke, learned advocate appearing for the petitioner submit that in response to the advertisement dated 28.5.2010 issued by respondent no.3, petitioner applied for appointment on the post of "Shikshan Sevak". After going through the selection process an appointment order dated 15.6.2010 came to be issued in his favour. Petitioner joined his services as 'Assistant Teacher' with respondent no.3-School. Consequently, on 29.12.2014, proposal seeking approval to his appointment was moved by the Management. However, Respondent No.2-Education Officer, vide his order dated 31.12.2014, declined to entertain said proposal referring to certain deficiencies, that proposal is not accompanied with certified copies of the educational qualifications of the petitioner and that, petitioner's appointment is made during the period of Ban on recruitment and that the post of graduate teacher has been reduced from staffing pattern of the school.

3. In pursuance of aforesaid order passed by Respondent No.2-Education Officer, Management terminated services of the petitioner. Petitioner was compelled to approach the School Tribunal at Solapur vide Appeal No.72 of 2015 assailing termination order. His Appeal came to be allowed directing reinstatement in service. The Management complied the order of the School Tribunal and reinstated the

petitioner. On reinstatement, again, proposal was forwarded to respondent no.2-Education Officer. However, respondent no.2 declined to entertain the proposal, giving selfsame reasons that as per the staffing pattern for 2013-2014, post of trained graduate teacher has been reduced.

4. Mr. Shelke, learned advocate appearing for the petitioner would submit that the whole basis of the impugned order is fallacious. The proposal seeking approval to the petitioner's appointment dated 15.6.2010 could not have been tested on the basis of the staffing pattern for the year 2013-2014. At the time of petitioner's appointment, post was very much available. However, because of wrongful rejection of approval, the petitioner's services were terminated. On reinstatement, Respondent no.2 is again giving selfsame reasons contrary to the legal and factual position.

5. Mr. K.S. Patil, learned AGP appearing for respondent no.2, relying upon contents of affidavit-in-reply submits that respondent Management failed to intimate the Education Officer before undertaking process of recruitment as contemplated under section 5 of the MEPS Act read with rule 9 so also advertisement was not published in widely circulated newspaper. He would further submit that the petitioner's appointment was made during the period of ban on recruitment as imposed by the Government. Further, post is not available in staffing pattern of school for year 2013-2014.

6. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective

parties. We have perused the record, which is made part of this petition. Apparently, on 10.5.2010, respondent no.2 granted permission in favour of Management of the School to advertise the post of graduate teacher reserved for Schedule Tribe category. In pursuance of the permission granted by the Education Officer, an advertisement dated 28.5.2010 was issued inviting applications from the eligible candidates. Petitioner belongs to ST category and holds requisite qualification. Consequently, he has been appointed by the Respondent/Management vide order dated 15.6.2010. Proposal seeking approval to the petitioner's appointment was forwarded to the Education Officer, however, same was rejected giving reason that appointment is made during the period of ban and the post of Graduate Teacher is reduced from staffing pattern.

7. Services of the petitioner were terminated in pursuance of the aforesaid communication. Petitioner approached the School Tribunal in Appeal no.72 of 2015 assailing the termination. The School Tribunal observed that the petitioner's appointment was perfectly in accordance with the provisions of the MEPS Act, regulations and rules framed thereunder. The School Tribunal has also observed that ban on recruitment had been introduced vide Government Resolution dated 2.5.2012. It has no relevance for appointment made in the year 2010. Consequently, directions were given by the School Tribunal vide its order dated 22.2.2021 to re-instate the petitioner. Management of the School complied order of School Tribunal and then forwarded fresh proposal seeking

approval to appointment of the petitioner. Apparently, proposal is rejected for selfsame reasons that as per the staffing pattern for 2013-2014, post of graduate teacher has been reduced.

8. We cannot countenance approach of the Education Officer. It is trite that proposal seeking approval to the appointment will have to be considered on the basis of rules, regulations and factual assertion as on date of such appointment. Appointment of the petitioner is preceded by advertisement issued by the Management after soliciting due permission from the Education Officer. The communication granting such permission clearly stipulates that post of graduate teacher was available in the school and petitioner's appointment was made against such a vacancy. Admittedly, petitioner belongs to Reserve Category, for which such post was advertised. As such, there is no irregularity in petitioner's appointment. Aforesaid factual aspect have been duly considered by the School Tribunal while allowing the appeal against Termination. The order of the School Tribunal has attained finality. Education Officer was party to the said proceeding.

9. At this stage, Mr. Patil, learned AGP submits that in 2014 when proposal was forwarded, post was not available as per the staffing pattern. Even, we assume such a contingency, Education Officer once granted permission to advertise the post in the year 2010 after ascertaining availability of the post and in deference to such permission

Management has filled in post, Education Officer is estopped from raising similar issue while considering proposal seeking approval to appointment. It is not disputed before us that appointment of the petitioner is made in the year 2010 in pursuance of the advertisement issued by the Management. In case, during subsequent period post is reduced from staffing pattern, the petitioner may be declared surplus by following mandate under Rule 26 of MEPS Rules. However that can not be good ground to reject approval to appointment, which is made in accordance with law against clear vacancy, particularly, after soliciting due permission from competent authority.

10. For the aforesaid reasons, we are of the considered view that the impugned order cannot be sustained in law. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 31.12.2014 as well as 16.02.2022 passed by the Education Officer (Secondary), Zilla Parishad, Ahmednagar on the proposal seeking approval to the appointment of the petitioner is hereby quashed and set aside.
- iii. The Respondent no.2- Education Officer (Secondary) shall grant approval to appointment of the petitioner and take further

steps for release of his salary in accordance with the Rules.

- iv. Writ Petition is accordingly disposed off. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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