



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

Writ Petition No. 7508 / 2019

Ganpat s/o Laxmanrao Pund,
Age : 51 years, Occu. Service as Hamal
R/o Shri Sainath Kanishth Mahavidyalaya,
MSVC, Waluj, Tal. Gangapur,
Dist. Aurangabad.

...Petitioner

Versus

1. State of Maharashtra
Through it's Secretary,
Skill Development and Entrepreneurship Dept.,
Mantralaya, Vistar Bhavan, Mumbai.
2. The Director,
Vocational Education & Training,
Directorate, Maharashtra State,
Mumbai.
3. The Dy. Director,
Vocational Education & Training,
Regional Office, Bhadkal Gate,
Aurangabad.
4. The District Vocational Education
& Training Officer, Bhadkal Gate,
Aurangabad.
5. Vijay Shikshan Prasarak Mandal,
R/o Row House No.14 Saidham Devanagri
Shahanoorwadi, Aurangabad.
Through it's Secretary.

6. Shri. Sainath Madhyamik va
Uchha Madhyamik,
MSVC Vidyalaya, Waluj,
Tal. Gangapur,
Dist. Auranagabad.
Through its Principal/Head Master.

..Respondents

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Advocate for the Petitioner : Mr. Ramesh I. Wakade

Addl.G.P. for Respondent Nos. 1 to 4/State : Mr. P.S. Patil

Advocate for Respondent No.5 and 6 : Mr. Sushant V. Dixit

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ..**

RESERVED ON : 20 JUNE 2024

PRONOUNCED ON : 25 JUNE 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India, seeking mandamus for granting approval to his appointment, payment of unpaid salary, incidental benefits and for regular salary. Petitioner claims to be employee of the respondent no.6/school run by the respondent no.5/Educational Institution which is supervised by respondent no.4/District Vocational Education & Training Officer.

3. Petitioner claims to have been appointed by order dated 14.06.1999 as Hamal in the respondent no.6/school on probation for two years. His proposal for approval was forwarded by the management to the respondent no.4/District Vocational Education & Training Officer. However, no approval could be given as respondent/management did not remove the deficiencies in the proposal. Petitioner made various representations to the respondents for granting approval to his appointment, disbursement of the salary and consequential benefits. The respondent no.2/Joint Director addressed a letter to the management that disbursement of the salary to the petitioner, was a responsibility of the unaided management. Despite that no service benefits were awarded to the petitioner by the respondent/management, which is a cause to file this petition.

4. Learned Counsel for the petitioner Mr. Ramesh Wakade submits that after following due procedure of law, petitioner was appointed and he was entitled to receive approval. He would submit that due to inaction of the management in not removing the deficiencies, the proposal for approval remained to be considered. He would submit that since 18.06.1999, petitioner is continuously rendering the services and entitled to the service benefits which is wrongly denied to him. He has referred to various correspondence made by the petitioner to the respondents and letter addressed by respondent no.4 to respondent 6. He would submit that it is a primary responsibility of the management to disburse salary.

5. Learned Counsel relies on the judgment in the matters of Mrs. Vaishali V. Chandekar & Others Vs. State of Maharashtra and Others, 1998(1) Bom.C.R. 227; Mayadevi Suryanarayanan Vs. Secretary, Telugu Samaj Shikshan Santha's Padmashali Telugu, 2010(3) Mh.L.J.202; Dhananjay Dhondiram Phad Vs. the State of Maharashtra and Others, Writ Petition No.8071/2018 and Shailaja Ashokrao Walse Vs. State of Maharashtra and Others, 1999(1) Mh.L.J. 291.

6. Respondent Nos.1 to 3 have opposed claim of the petitioner by filing affidavit-in-reply. It is contended that it was the responsibility of the respondent/management to disburse salary. Minimum competency vocational courses run by the respondent no.6 was on permanent non-grant basis and answering respondents were not liable to pay.

7. Respondent Nos. 5 and 6 have vehemently opposed the claim of petitioner by filing affidavit-in-reply. It is contended by Mr. Sushant Dixit, learned Counsel that petitioner was appointed on temporary post of Hamal and therefore no steps were taken to secure approval. He would further submit that writ petition suffers from latches as after twenty years, claim of salary from 18.06.1999 has been made, which is barred by limitation. It is further submitted that petitioner is not employee of the respondent/management and on the contrary he runs auto-rickshaw to earn his livelihood. No correspondence was made by the petitioner to the management claiming salary. He would

further urge that present petition involves disputed questions of fact as the employer employee relationship is under cloud and the petition is liable to be dismissed. Learned Counsel Mr. Sushant Dixit seeks to rely on judgment rendered in the matter of Maharashtra Shikshan Samiti and Ors. Vs. State of Maharashtra and Ors., Writ Petition No.4771/2009 and Shaikh Tausif Ahmed Khamar Pasha Vs. Ambar Shikshan Prasarak Va Bahuddeshiya Sevabhavi Sanstha and Ors., Writ Petition No.10009/2017.

8. Having pitted with the reply of the management, petitioner filed rejoinder and various documents to show that there is employer employee relationship. He has discharged work. He would rely upon muster and certificate of the Principal issued on 12.12.2009 stating that petitioner was working since 18.06.1999.

9. The respondent no.6 is higher secondary school to which minimum competency and vocational courses are attached which are on permanent non-grant basis. Petitioner has filed on record list of the candidates called for the interview on 06.06.1999, resolution passed on 13.06.1999 by the respondent/management and the appointment order issued to the petitioner appointing him as Hamal on probation of two years. These documents are not disputed by the respondent no.5 and 6.

10. Petitioner appeared for interview on 06.06.1999. He was selected and recommended by the resolution of the management. Appointment order shows that he was appointed on 18.06.1999 on

probation on scale of Rs.2250-3200. He appears to have joined services on 18.06.1999 and there is a joining report bearing signature of Principal of the respondent no.6. Thereafter the proposal appears to have been forwarded by the respondent no.6 to the respondent no.3/Deputy Director. It includes petitioner's name and further refers that his appointment was against post reserved for OBC. The proposal and the documents forwarded alongwith it, have not been disputed by the respondent/management, except contending that appointment was temporary.

11. The appointment order shows that petitioner was appointed on probation for two years. No supporting documents have been placed on record by the respondent/management to demonstrate that appointment of the petitioner was temporary. The burden is on the respondent/management to disclose nature of the appointment. The respondent/management should have discharged the burden. On the contrary management forwarded proposal seeking approval. It was stated in the proposal that appointment was made after following due procedure of law. We therefore find that petitioner is employee of the respondent no.5 and 6.

12. It reveals from record that petitioner made correspondence with the respondent nos. 2 to 4 on 26.04.2018, though belatedly, ventilating grievance that his proposal for approval was not being considered and he was not being paid salary despite rendering services. Again representation was made on 11.07.2018,

07.08.2018 and 02.10.2018 by him. In response to his correspondence, Joint Vocational Education & Training Officer addressed letter on 14.08.2018 to the respondent/management to do the needful. Again on 18.08.2018 respondent no.4 addressed a letter to the respondent no.6, calling upon him to remove the deficiencies and forward the proposal. Respondent no.4 further called upon the management to remove the deficiencies of the proposal and submit the same vide letter dated 06.10.2018 and 11.10.2018.

13. Affidavit-in-reply of the respondent no.5 and 6 is silent on this aspect. They were expected to comply the instructions issued by the respondent no.4 or to respond the authorities or the petitioner. It was an opportunity to the respondent/management to inform that petitioner was temporary employee and he was not entitled to the service benefits. No reason is forthcoming as to why timely steps were not taken by the respondent/management either of communicating the petitioner or the respondents/authorities disclosing his status, his nature of appointment and entitlement to the service benefits. We are of the considered view that it is not open for the respondent/ management to contend for the first time in the affidavit-in-reply before this Court that the petitioner was an adhoc employee and there was no employer employee relationship with him.

14. After appointment of the petitioner, respondent/management forwarded proposal seeking approval to the District Vocational

Education & Training Officer. Due to the complaints of the petitioner, respondent no.4/Joint Director informed the management and instructed to file fresh proposal by removing deficiencies in earlier proposal. Respondent/management should have complied with the instructions. No endeavour was made by the management to submit fresh proposal by removing the deficiencies. Petitioner cannot be said to be responsible for the lapses on the part of the management. We have reason to infer that petitioner was working with the respondent/management and the management failed to submit fresh proposal.

15. In order to support the submission that petitioner is rendering services with the respondent/management, number of documents are produced by the petitioner alongwith affidavit-in-rejoinder. Those are extract of muster role showing appointment of petitioner from 18.06.1999 and his signatures for the period 2019-2020 and 2020-2021, certificate dated 12.12.2009 issued by Principal of the respondent no.6, photocopy of identity card, list of the employees. The documents have not been controverted by the respondent/management. We find that petitioner has made out a case that he is rendering services with the respondent/management. The appointment of the petitioner is a fact within special knowledge of respondent/management. No endeavour has been made by them to rebut the contention of the petitioner that salary has not been paid to him. We are therefore inclined to hold that petitioner is entitled to arrears of salary and future monthly salary.

16. The services of the petitioner have not been approved by the respondent no.6. Payment of salary is the primary responsibility of the management. We find substance in the submission of learned Counsel for the petitioner by referring to the decision in the matter of Vaishali (supra) (Paragraph No.7) and Dhananjay (paragraph no.5). In the absence of approval, respondent no.5 and 6 are liable to disburse salary since the date of appointment of the petitioner till today. It is not permissible for them to take shelter that the services have not been approved. There are lapses on their part by not submitting fresh proposal or for not removing the deficiencies in the earlier proposal of the petitioner.

17. We have considered judgment of the coordinate bench rendered in the matter of Shailaja (supra), our attention is adverted to paragraph no.27 by which certain directions are issued to the Education Officers and Deputy Directors. The respondent no.4 cannot be blamed for not granting approval to the appointment of the petitioner because respondent/management failed to remove the deficiencies of the proposal or failed to submit fresh proposal. Neither the benefit of default clause of 27(c) can be extended to the petitioner. We are of the considered view that paragraph no.27 of the judgment does not contemplate situation which we are considering in the present case. Despite notifying the deficiencies and repeated instructions of the respondent no.7, if the respondent no.5 and 6 are adamant then it would not be appropriate to fasten liability on the state exchequer by invoking the default clause.

18. Learned Counsel Mr. Sushant Dixit refers to the judgment of Maharashtra Shikshan Samiti and Ors. (supra) to buttress his submission that claim for salary is like a money claim which is regulated by law of limitation. We have gone through paragraph no.7 which refers to judgment of Supreme Court in the matter of Municipal Council, Ahmednagar and Another. We are bound by the law laid down therein.

19. Another judgment of the coordinate bench in the matter of Shaikh Tausif Ahmed Khamar Pasha (supra) is referred to by learned Counsel to buttress the submission that when there are disputed questions of fact then writ petition under Article 226 claiming scale, is not maintainable. We have gone through paragraph nos. 19, 20 and 21 of the judgment. In the present matter though respondent no.5 and 6 tried to contend that petitioner was an adhoc employee or after initial period he was no longer in the services, we have not accepted the submission of the management by recording reasons. Therefore judgment cited by Mr. Dixit cannot be made applicable.

20. The upshot of our above discussion is that petition succeeds to the extent of unpaid salary of three years preceding 17.06.2019, date of filing of petition and for the relief of future salary from 17.06.2019 onwards to be paid by respondent no.5 and 6. We therefore pass following order :

ORDER

- i. Petitioner is entitled to arrears of salary for preceding three

years from 17.06.2019 and future monthly salary from 17.06.2019 payable from the respondent no.5 and 6.

ii. Respondent No.5 and 6 shall pay the arrears of salary within a period of three months and shall continue to pay future salary to the petitioner.

iii. Respondent No.5 and 6 are at liberty to file fresh proposal seeking approval to the appointment of the petitioner and the same shall be considered on its own merits by the respondent no.4.

iv. In case, approval is granted, respondent no.5 and 6 shall be entitled to claim reimbursement as permissible in law.

v. It is clarified that payment of arrears of salary and the future salary shall not depend upon the decision on the proposal of approval or entitlement of reimbursement.

vi. Leave granted to petitioner to withdraw the cost.

21. The writ petition is disposed of. Rule is made absolute in above terms. There shall be no order as to costs.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE