



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 WRIT PETITION NO.11459 OF 2021

Bapu Dagadu Gore,
Age 42 yrs., Occ. Service,
R/o Darji Borgaon, Tq. Renapur,
Dist. Latur.

... Petitioner

... Versus ...

- 1 The State of Maharashtra,
Through it's Secretary,
Education Department,
Mantralaya, Mumbai.
- 2 The Deputy Director,
Latur, Tq. & Dist. Latur.
- 3 Education Officer (Secondary),
Zilla Parishad, Latur.
- 4 The President/Secretary,
Jaibhavani Shikshan Sanstha,
Pangaon, Tq. Renapur, Dist. Latur.
- 5 The Headmaster,
Chinmayanand Swami Vidyalaya,
Darji Borgaon, Tq. Renapur,
Dist. Latur.

... Respondents

...

Mr. L.H. Kawale, Advocate for petitioner

Mr. P.S. Patil, AGP for respondent Nos.1 to 3

Mr. S.S. Manale, Advocate for respondent Nos.4 and 5

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 26th FEBRUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present writ petition has been filed for following reliefs.

“B) By issuing writ of mandamus or any other appropriate writ, order or directions, the respondent No.3 Education Officer (Secondary) may kindly be directed to grant the approval of petitioner from 20.08.1996 instead of 07.02.2002 in view of order dated 15.02.1999 passed by learned School Tribunal in Appeal No.170/1998.

C) By issuing writ of mandamus or any other appropriate writ, order or directions, the respondent No.3 Education Officer (Secondary) may kindly be directed to reconsider the approval order dated 03.03.2005 in view of the compromise terms and the order passed by learned School Tribunal.

D) Pending hearing and final disposal of writ petition, the respondent No.3 Education Officer (Secondary) may kindly be directed to reconsider the approval order dated 03.03.2005 (Exh.“I”) in view of the compromise terms and the order passed by learned School Tribunal.”

2 The facts leading to the petition are that the petitioner was

qualified for being appointed as an Assistant Teacher. Respondent No.4 had issued advertisement for filling up the post of Assistant Teacher in respondent No.5 School. After the selection process, petitioner succeeded and respondent No.4 issued appointment letter in his favour on 20.08.1996 as Assistant Teacher for the educational year 1996-97. The petitioner joined his duties. Approval was granted by respondent No.3 by order dated 15.03.1997 to the petitioner. After considering the satisfactory work of the petitioner, respondent No.4 issued permanent order in favour of the petitioner on 11.06.1997 as Assistant Teacher. However, thereafter there was oral termination of the petitioner by respondent No.4 and, therefore, it was challenged by the petitioner by filing Appeal No.170/1998 before School Tribunal, Aurangabad. The School Tribunal heard the appeal on stay application on 15.02.1999 and granted stay. Petitioner had approached to respondent Nos.4 and 5 allowing him to resume the duties, however, he was not allowed. Since it amounts to disobedience of the order passed by School Tribunal, the petitioner filed Contempt Petition No.12/2001 before the School Tribunal for execution of the order dated 15.02.1999. After respondent Nos.4 and 5 caused their appearance, there was compromise between them and the petitioner. Terms of compromise were entered into on 06.02.2002. Management then agreed to allow the petitioner to join the duties and petitioner agreed that he will not claim the arrears of salary from

the Management. The Management then agreed that it would submit the salary bills of petitioner to the Education Officer. On those terms the contempt petition came to be disposed of. In fact, when it was informed by the petitioner that respondent Nos.4 and 5 were not allowing him to join the duties in spite of the order passed by the School Tribunal, the Deputy Director of Education, Aurangabad had stopped the salary of respondent No.4 by letter dated 30.05.2000. The Education Officer had then issued letter in the year 2003 that the petitioner's proposal as Shikshan Sevak should be sent for its approval, in view of the fact that the petitioner was allowed to join the duties on 07.02.2002. The matter was again taken up before the School Tribunal as there was doubt in respect of sanction about the salary bills. The matter was heard by the School Tribunal, Solapur and order was passed on 15.02.2005 allowing the application filed by the petitioner in the appeal. Thereafter the Education Officer – respondent No.3 issued order dated 03.03.2005 in view of the order passed by the School Tribunal on 15.02.2005 and granted approval to the appointment of the petitioner as Assistant Teacher. While granting approval the Education Officer has taken the first date of appointment of the petitioner as 11.06.1997 but the approval was granted from 07.02.2002. The said order is illegal. Respondent No.3 had failed to consider that School Tribunal had granted stay to the oral termination on 15.02.1999. That means, the

petitioner was in service. The appeal filed by the petitioner came to be disposed of on 05.08.2005 in view of the terms of compromise. Therefore, the present writ petition.

3 Affidavit has been filed by Mr. Ankush Bhagwat Shingde, the Superintendent Class-II, in the office of Education Officer (Secondary), Zilla Parishad, Latur. The facts are reiterated. However, it is said that after the compromise, the petitioner was allowed to resume his duties from 08.02.2002. There was no question of allowing the petitioner to claim benefits i.e. approval to his services from 20.08.1996, in view of the facts of the case. The proposal submitted by the Education Society was to the extent that the petitioner should be treated on probation from 07.02.2002 for a period of two years and thereafter from 07.04.2004 as regular Assistant Teacher. As per the proposal the impugned order has been passed.

4 Heard learned Advocate Mr. L.H. Kawale for the petitioner, learned AGP Mr. P.S. Patil for respondent Nos.1 to 3 and learned Advocate Mr. S.S. Manale for respondent Nos.4 and 5.

5 The petitioner has relied on the decision of this Court in **Harishchandra Namdev Kawale vs. The State of Maharashtra and others** in Writ Petition No.6141 of 2008 decided on 30.01.2015, wherein it is said that

the order passed by the School Tribunal is judicial order and is binding upon the parties and, therefore, the respondents cannot be heard to say that the petitioner is not entitled for the continuity in service from 1979.

5.1 Further, reliance has been placed on the decision in **Keraleeya Samajam and another vs. Pratibha Dattatray Kulkarni (Dead) Through L.Rs. and others** [2021 SCC OnLine SC 853], wherein it was observed that *the employee was failed to approach the Deputy Director only when the Management failed to make payment and, therefore, on the count of lapses and inaction on the part of the Management the employee cannot be allowed to suffer.*

6 At the outset, we would like to say that the facts in the above said two cases are totally different. Here, the impugned order came to be passed on 03.03.2005; yet, the petitioner is approaching this Court on 03.10.2021. Whatever orders were passed even before learned School Tribunal, those were prior to the impugned order dated 03.03.2005. The petitioner was very well aware about the impugned order, still he has kept quiet for such a long period and there is absolutely no reason given for his belated approach to this Court.

7 The first and the foremost fact is that as regards the alleged oral

termination is concerned, interim protection was granted by the learned School Tribunal, Solapur on 15.02.1999 and the Management was directed to allow the petitioner to resume the duty. It appears that respondent Nos.4 and 5 did not agree as per the directions of the School Tribunal and, therefore, contempt petition was filed and then there was a compromise between the petitioner and the Management. The compromise that had taken place in the appeal before learned School Tribunal came to be read and recorded at Exh.45 in Appeal No.211/2006 on 05.08.2008. The wordings of the compromise would show that the institute gave a clear understanding that now in view of the vacancy with the institution, the petitioner would be absorbed in the vacant post. That means, his appointment was not considered from 1997. Even in respect of compromise that was entered into in contempt petition it is to be noted that the Management had then agreed to allow the petitioner to joint the duties with effect from 07.02.2002. There was no clear stipulation that the Management would consider the appointment of the petitioner from the date of initial appointment. The petitioner ought to have been vigilant and cautious when he entered into the compromise. As per the said compromise the appeal came to be disposed of. That means, in the present case there was no specific order by the School Tribunal that the appointment of the petitioner should be taken from the date of his initial appointment i.e. 16.06.1997.

8 At the cost of repetition, therefore, it is to be noted that when the petitioner had not challenged impugned order since 03.03.2005 till 06.10.2021, the petition suffers from delay and laches. Therefore, no case is made out for exercise of constitutional powers of this Court in favour of the petitioner. Writ Petition, therefore, stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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