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WP 10763.22.odt

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

WRIT PETITION NO. 10763 OF 2022

Ajay s/o. Changdev Dhaktode,
Age 31 years, Occ. Assistant Teacher,
R/o. Saraswati Colony, Ward No. 07,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Secondary School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Pune Region, Pune – 411 001.
3. The Education Officer(Secondary)
Zilla Parishad, Ahmednagar.
4. Maharashtra Seva Mandal, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar,
Through its Secretary.

.. RESPONDENTS.

Mr. S.T. Shelke, Advocate for the petitioner
Mr. S.K. Shirse, AGP for respondent Nos. 1 to 3.
Mr. S.S. Wagh, Advocate for respondent No.4.

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

**RESERVED ON : 9TH MAY, 2024
PRONOUNCED ON : 10TH MAY, 2024.**

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocates appearing for the parties.

The petitioner impugns the order dated 27.9.2022 passed by the Education Officer (Secondary) – Respondent No.3, thereby declining approval to the appointment of the petitioner on the post of Assistant Teacher on establishment of respondent No.4 School.

2. Mr. S.T. Shelke, learned advocate appearing for the petitioner submits that the post of Assistant Teacher was vacant on the establishment of respondent No.4 school. The management of the school made a request to Education Officer on 10.10.2016 to depute surplus teacher, if any, against the vacancy or permit the management to fill up the post and issue advertisement for that purpose. The respondent No.3 failed to respond to the request of the management. Therefore, management published an advertisement dated 11.1.2017 inviting applications from eligible candidates. The petitioner, being eligible, responded to the advertisement and after going through the selection process, came to be appointed w.e.f. 17.1.2017. The proposal seeking approval to the petitioner's appointment was forwarded to the respondent No.3. However, same is rejected vide impugned order dated 27.9.2022.

3. Mr. S.T. Shelke, learned advocate for the petitioner submits that the rejection of approval to the appointment of petitioner is for erroneous reasons. The appointment of the petitioner is against a clear vacancy. He holds the requisite qualification. The Government Resolution dated 6.2.2012, 23.6.2017 and circular dated 4.5.2020 issued by the School Education Department cannot be retrospectively made

applicable to the appointment of the petitioner. According to him, the order is not sustainable in law. Therefore, he urges to quash and set aside the impugned order and issue directions to grant approval to the petitioner's appointment.

4. Mr. S.K. Shirse, learned AGP appearing for respondent Nos. 1 to 3 refers to the affidavit in reply filed by Mr. Ashok Kadu, Education Officer and submits that although the petitioner has been appointed on 17.1.2017, the proposal seeking approval has been submitted on 9.6.2022. The deficiencies in the proposal were communicated to the management. However, they failed to comply the same. Mr. Shirse would further submit that the advertisement was not published in a widely circulated newspaper. The record showing vacancy on the establishment of the school was not submitted with proposal. The procedure prescribed under the Government Resolution dated 6.2.2012 and 23.6.2017 was not followed. Consequently, the proposal has been rightly rejected recording adequate reasons.

5. We have considered the submissions advanced by the learned advocates for the respective parties. We have gone through the record tendered into service for our consideration. It appears that on 16.12.2014, Mr. B.R. Andhale, a surplus Teacher, was temporarily absorbed on establishment of the school. However, on 1.9.2016, he was absorbed at Vidya Mandir Prashala at Rahuri. Consequently, the vacancy arose on the establishment of respondent No.4 school. On 13.10.2016, the management of the school addressed a communication dated 10.10.2016 to respondent No.3 requesting to depute surplus teacher for absorption against the vacancy or permit the management to advertise

the post. The copy of the communication is placed on record of this court. It shows that on 13.10.2016, the office of the respondent No.3 received and acknowledge the same. After waiting for almost 3 months, management published an advertisement dated 11.1.2017, leading to the appointment of the petitioner w.e.f. 17.1.2017.

6. Copies of muster roll and seniority list are made part of the record with affidavit in reply filed by the management. The muster roll indicates that the petitioner has continuously discharged the duties from the date of appointment. The muster roll appears to have been certified by the Block Development Officer. Management attempted to submit proposal seeking approval to the petitioner's appointment on 4.4.2018. Finally, the proposal reached to the office of respondent No.3 on 9.6.2022. It is true that the delay in submitting the approval is not satisfactorily explained, but fact remains that there is impeccable record to establish that the petitioner has been appointed since January, 2017 and discharged his duties as Assistant Teacher at the school.

7. Turning back to the impugned order, it can be gathered that the rejection of approval is broadly for following reasons :-

- [i] Permission was not obtained for issuing advertisement;
- [ii] Copy of advertisement published in widely circulated newspaper is not available;
- [iii] The details of the Assistant Teachers having B.Ed. Qualification, but working in D.Ed. Pay Scale are not made available;
- [iv] The work load on the establishment of the school cannot be ascertained;
- [v] The recruitment process is not conducted in tune with

directions issued under the Government Resolution dated 6.2.2012 and 23.6.2017 and circular dated 4.5.2020.

8. Pertinently, the record indicates that the petitioner's appointment is made against vacant post that was previously occupied by Mr. B.R. Andhale. The management of the school had communicated available vacancy so also sought permission to advertise the post. However, in absence of response from office of respondent No.3, the process of recruitment of the vacant post has been conducted leading to the appointment of the petitioner.

9. In that view of the matter, it would not be open for the respondent No.3 – Education Officer to contend that the permission for advertisement was not obtained or details of vacant posts were not known to his office. So far as the other reasons incorporated in impugned order relying upon the Govt. Resolutions referred above is concerned, it has no application in the facts and circumstances of the case. SARAL was introduced vide Government Resolution dated 23.6.2017 i.e. after appointment of the petitioner. The Government Resolutions and circulars issued after petitioner's appointment could not have been made applicable retrospectively while considering the proposal seeking approval to appointment made in the month of January, 2017.

10. The observations of the Education Officer are mechanical and contrary to the record. We do not find any substantial defect in the procedure followed by the management while appointing the petitioner. On the other hand, the Education Officer for defaults of his office has frustrated the proposal. Consequently, the impugned order can not be

sustained in law. Hence, we proceed to pass the following order :-

ORDER

[a] The writ petition is allowed;

[b] The impugned order dated 27.9.2022 passed by the Education Officer (Secondary), Zilla Parishad, Ahmednagar is quashed and set aside;

[c] The respondent No.3 – Education Officer (Secondary), Zilla Parishad, Ahmednagar shall grant approval to the petitioner's appointment and take further steps for release of his salary in accordance with law and rules.

[d] Rule made absolute in above terms. No costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-