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wp 13649.21R.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 13649 of 2021**

Sambha S/o. Dagdu Gore
Age 39 years, Occ. Service,
R/o. At Post Umraj, Tq. Kandhar,
District Nanded.

.. Petitioner

VERSUS

- 1] The State of Maharashtra
Through the Additional Chief Secretary,
School Education Departement,
Mantralaya, Mumbai.
- 2] The Director of Education.
Secondary and Higher Secondary,
Maharashtra State, Pune,
Central Building, Pune.
- 3] The Divisional Deputy Director of Education,
Latur Division, Latur,
District Latur.
- 4] The Chairman, School Portal Committee @
Divisional Chairman of the Maharashtra
State Board of Secondary and Higher Secondary
Education, Latur Division Board, Latur.
- 5] The Education Officer (Secondary)
Zilla Parishad,
Nanded.
- 6] The President/Secretary,
Sant Namdeo Maharaj Shikshan Prasarak
Mandal, Kandhar,
Tq. & Dist. Nanded,
C/o. Deendayala Junior College,
Taroda Road, Nanded,
Tq. And Dist. Nanded.

7] The Principal,
Deendayal Junior College,
Taroda Road, Nanded,
Tq. And Dist. Nanded.

.. Respondents.

Mr. V.G. Salgare, Advocate for the petitioner
Mr. N.S. Tekale, AGP for respondent Nos. 1 to 3 and 5
Mr. U.S. Mote, Advocate for respondent No.4.
Mr. S.Y. Mahajan, Advocate for respondent Nos. 6 and 7.

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

DATE : 1st MARCH, 2024.

JUDGMENT [S.G. CHAPALGAONKAR, J]:-

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

The petitioner approached this Court under Article 226 of the Constitution of India with the following substantive prayer :-

“B. By writ, order or directions, the respondent No.1 to 4 may kindly be directed to include the name of the petitioner Class-IV employees in the school portal for 20% grant-in-aid salary and to continue his services till the date of his retirement.”

2. The petitioner contends that he is in service as Class IV employee under respondent No.7 Dindayal Junior College at Nanded. He has been appointed on 10.6.2010 against a clear and vacant post as per

the staff approval. His services have been approved by the respondent No.3 vide order dated 20.12.2016. Approval of continuation of his services has been issued on 21.2.2017 on non grant in aid basis. The respondent No.7 school is declared eligible for grant-in-aid vide Govt. Resolution dated 13.9.2019 issued by respondent State of Maharashtra. In all 10 posts of teaching and 3 posts of non-teaching employees are approved on grant in aid to the tune of 20% under Respondent No.7. The respondent No.7 submitted proposal for inclusion of teaching and non-teaching employees in the School Portal for the purpose of releasing grant-in-aid. The seniority list of teaching and non teaching employees alongwith pay bills was submitted to the Superintendent of Pay Unit. However, pay bill for all employees is sanctioned, excluding the petitioner. The respondent No.7 made correspondence with respondent No.3 Divisional Deputy Director of Education and Education Officer (Secondary) pointing out that the petitioner is discharging his duties since 2010 and his services have been approved. Therefore, his name is required to be included in the school portal for release of grant-in-aid.

3. The respondent No.7 i.e. Education Officer issued communication dated 29.9.2021, giving reference to Govt. Resolution dated 11.12.2020, informed that the post of Class IV employees are abolished. The respondent No.7 can receive 10% Peon Allowance to be paid to contractual employees discharging duties of Class IV. Although respondent No.5 represented respondent No.7 that the petitioner is a permanent Class IV employee on their establishment since 2010 and requested to include his name in the School Portal, no response is given by the respondent authorities.

4. Mr. V.G. Salgare, learned advocate for the petitioner submits that the services of the petitioner have been duly approved by the Education Officer. Initially, he was granted approval from 30.5.2010 as probationer on un-aided basis. Later on, permanent approval is granted. The respondent No.7 school is now receiving 20% grant-in-aid. However, respondent authorities have not included the name of the petitioner on the School Portal. Probably, they are justifying their inaction on the basis of Govt. Resolution dated 11.12.2020, by which the appointment of Class IV employees is permitted on contractual basis against consolidated allowance. He would submit that the Government Resolution cannot be applied retrospectively to the employees already working on the establishment of school. He would point out that as per the staffing pattern of the school, 1 Class IV Post was approved since beginning.

5. Mr. N.S. Tekale, learned AGP would submit that now the Government has introduced the aforesaid scheme and recruitment of Class IV posts is not permissible. However, they can be appointed on contractual basis for which provision is made to release consolidated fund.

6. We have considered the submissions advanced by the learned advocates appearing for the respective parties. Pertinently, the petitioner has been appointed in the year 2010 on establishment of respondent No.7 Junior College and he is discharging the duties as Class IV employee. The staffing pattern continuously shows that 1 post of Peon was sanctioned on the establishment of respondent No.7. The petitioner's services were approved by the Divisional Deputy Director of Education, Latur vide order dated 20.12.2016. He was granted initial

approval w.e.f. 30.5.2010 on probation on un-aided basis. Permanent approval and continuation has been granted w.e.f. 30.5.2012 under order dated 21.2.2017. As such, there is no dispute that the petitioner worked as a permanent employee on the establishment of respondent No.7.

7. It appears that respondent No.7 is declared as eligible for grant-in-aid by Government Resolution dated 13.9.2019. By Government Resolution dated 15.2.2021 the State of Maharashtra released 20% grant-in-aid against 10 teaching and 3 non-teaching posts serving under respondent No.7. The pay bills of the employees including the petitioner was submitted with Superintendent of Pay Bills on 24.3.2021. However, for no good reason, pay bill is approved excluding the petitioner. Further communication made by respondent No.7 with respondent Nos. 3 and 5 indicate that they are relying upon Government policy brought into existence vide Government Resolution dated 11.12.2020 by which the scheme for contractual appointment of Class IV employees has been introduced.

8. It is difficult to countenance with the approach of the respondent authorities while dealing with the case of the petitioner. When the petitioner is discharging his duties since 2010 as Class IV employee and his appointment was made after following due process of law and consequently approved, he would continue to be an integral part of the staffing pattern of the respondent No.7 School. The scheme introduced under Government Resolution dated 11.12.2020 can not be made applicable to the case of the petitioner. Even by reading clause No.8 of the Government Resolution dated 11.12.2020, it can be gathered that if Class IV employees are working on the sanctioned posts and their

services have been approved by the competent authorities, they shall be continued to work on the said establishment and on such retirement, sanctioned post would be lapsed. Taking into consideration the aforesaid contents of the Government Resolution of 2020 the respondent authorities have no reason to exclude the name of the petitioner from the banefit of grant-in-aid given to the school.

9. In that view of the matter, we are of the considered view that the writ petition deserves to be allowed. Resultantly, we pass the following order :-

ORDER

[a] The writ petition is allowed;

[b] The respondent Nos. 1 to 5 are directed to include the name of the petitioner as Class-IV employee in the School Portal for the purpose of releasing 20% grant-in-aid as admissible to respondent No.7 School alongwith other employees and take further steps for release of his salary bills.

[c] Writ petition stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-