



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 13459 OF 2023

SUNIL KISHANRAO KSHIRSAGAR

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

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Advocate for the Petitioner : Mr. Mali Dayanand S.
AGP for Respondents 1 to 3/State : Mr. P.K. Lakhotiya
Advocate for Respondents 4 and 5 : Mr. R.D. Biradar i/by Mr.
G.L. Awale

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CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 12th January, 2024

Per Court :-

1. This case is a classic example of a Management, causing immense hardships and agonies to an employee. And in such circumstances, the Court cannot be a silent spectator.

2. The Petitioner was appointed as a Peon on 15.12.2009. His proposal for seeking approval to his appointment, is forwarded on 17.07.2023, after almost 14 years. As a consequence of the delayed submission of the proposal, the Education Officer has passed the impugned order dated 08.09.2023, refusing to accord an approval to his appointment.

3. The learned Advocate for Respondent Nos.4 and 5/ Management has made strenuous efforts to indicate to us that the proposal was tendered by the Management on 10.12.2012 and again on 05.01.2018.

4. We have perused both these purported proposals. Both are in the handwriting of the Headmaster. Both are as are short communications and as vague as they could be. Not a single document is annexed to the so called proposals. What was expected was that the copies of the, (a) advertisement, (b) the application of the appointed candidate, (c) details of the competing candidates, (d) minutes of the selection committee's meeting, (e) decision of the selection committee and (f) the appointment order, etc. should have been annexed to the proposals. So also, the reservation roster should have been mentioned. If the two communications are to be termed as proposals, we would never expect the Education Officer to entertain such purported proposals. We have also perused the proposal dated 17.07.2023. That is also absolutely vague and ambiguous. It is a document containing two sentences.

5. We are convinced that the Management has deliberately sent such types of communications branding them as

proposals, for no good reason and object. The Management has intentionally not sent even a single appropriate proposal as is required so as to be considered by the Education Officer. As a consequence of such deficient proposals and the delay in its submission, the Petitioner has been living under the fear of losing his job and has suffered insecurity for the last 14 years. The Management has been paying him Rs.3,000/- per month as an honorarium for the last 14 years. The Petitioner, who is a Peon, has been surviving on Rs.3000/- per month for the last 14 years. Our conscience is shocked and we find that this is a fit case wherein, the Management need not be shown misplaced sympathy, rather, deserves to be dealt with, with an iron hand.

6. The contention of the learned AGP is that, because the Management did not forward an appropriate proposal in time, no salary was paid to the Petitioner from the salary grants, though the institution is 100% grant-in-aid. Now, even if the Petitioner is granted an approval with retrospective effect, salary grants cannot be apportioned with retrospective effect. Therefore, the Management will have to suffer the burden of payment of salary as per the pay scale since the Petitioner is working in the school which has 100% grant in aid. The Management would be

liable to pay salary as per the permissible salary scales from it's coffers after two years probation of the Petitioner as a Peon.

7. In view of the above, **this Writ Petition is partly allowed**. The impugned order dated 08.09.2023 is quashed and set aside with the following directions :-

(a) Respondent Nos.4 and 5/ Management shall prepare a proposal strictly as prescribed by law containing all the documents, to which we have referred to in the foregoing paragraph No.4, and tender the same by a personal messenger to the Education Officer, within 15 days from today.

(b) The Education Officer shall accord an approval to the Petitioner within 15 days thereafter, and the services of the Petitioner would be approved with effect from the date of his appointment.

(c) Since the education department of the State is not at fault, the Management will have to shoulder the burden of payment of difference of the salary as per the approved payscales at the relevant time, to the Petitioner, with retrospective effect.

(d) Arrears of such salary shall be calculated by the Education Officer within 30 days from today and the chart shall be tendered to the Management for making the payment of arrears within a

further period of 45 days. A copy of this chart shall be supplied to the Petitioner for reference purpose.

(e) To ensure that such Managements do not venture into such inappropriate activities, we are imposing costs of Rs.1 lac on the Management, which shall be deposited by the Management in this Court, on or before 31.01.2024. We caution that the said amount shall not be recovered from the salary of the Petitioner and he should not be compelled to make such payment in cash.

(f) We record the statement of the learned Advocate for the Petitioner, made on instructions, that the Petitioner would donate Rs.25,000/- (Rupees Twenty Five Thousand) to the Advocates' Association of Bombay High Court, Bench at Aurangabad, from the cost amount, and he will withdraw the remaining amount without conditions.

(g) If the above directions of payment of arrears of salary and costs are not complied with within the timeline as directed by us hereinabove, we direct the District Collector to initiate steps for recovering such unpaid amounts, as arrears of land revenue, from the Management and its properties.

(h) If any new cause of action arises or the cause of action arises out of the present proceedings/calculations etc. and the

Petitioner is aggrieved by the same, we grant liberty to the
Petitioner to avail of the remedy as is permissible in law.

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)