



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13875 OF 2018

1. Shri. Ramkrishna s/o Ramdas Patil
Age: 46 years, Occu.: Service,
R/o. At Post Vadane,
Taluka and District Dhule
2. Shri. Bhanudas s/o Shamdas Bairagi
Age: 37 years, Occu.: Service,
R/o. At Post Kusumba,
Taluka and District Dhule
3. Shri. Kishor s/o Somnath Masule,
Age: 32 years, Occu.: Service,
R/o. At Post Chougaoon,
Taluka and district dhule

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai.
2. The Director of Higher Education,
3, B.J. Road, Central Building,
M.S. Pune – 411001.
3. The Joint Director, Higher Education,
Maharashtra Jivan Pradhikaran
Department, First Floor, Behind
Grahak Nayalaya,
Jalgaon, Pin 425009.
4. Shri. Shivaji Vidhya Prasarak Sanstha,
Fule Bhavan, Lane No.6, Dhule,
Through its President/Secretary.
5. The Principal,
S.V.P.S's Late S. D. Patil alias
Baburao Dada Arts, Commerce

and Late Bhausaheb M.D. Sisode
Science College Shindkeda,
District Dhule.

6. The Principal,
S.V.P.Sanstha's Late Karmaveer
Dr. P.R. Ghogrey Science College,
Dhule.

.. RESPONDENTS

...
Mr. U. R. Awati i/b Talekar and Associates, Advocate for petitioners.
Mr. P. S. Patil, AGP for respondent Nos.1 to 3.
Mr. N. E. Deshmukh, Advocate for respondent Nos.4 to 6.
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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : JANUARY 24, 2024.
PRONOUNCED ON : FEBRUARY 05, 2024.**

JUDGMENT (Per Smt. Justice Vibha Kankanwadi) :-

. Rule. Rule made returnable forthwith. Heard learned Advocates
for the appearing parties finally by consent.

2. The petitioner has challenged the order dated 05.01.2018
passed by respondent No.3 only to the limited extent of refusing to
grant continuity in service, arrears of salary and other service benefits
from initial date of appointment till the date of approval.

3. Heard learned Advocate Mr. U. R. Awati instructed by Talekar
and Associates for petitioners, learned AGP Mr. P. S. Patil for
respondent Nos.1 to 3 and learned Advocate Mr. N. E. Deshmukh for
respondent Nos.4 to 6.

4. The factual matrix leading to the present petition are that the present petitioners came to be appointed in respondent No.4 Institute in view of the advertisement dated 19.04.2010, which was on the basis of No Objection Certificate issued by respondent No.3 to respondent No.4 to fill up in all ten posts of non-teaching staff. The appointment orders to the petitioners came to be issued on 15.05.2010. Accordingly, they joined their services. The proposals were thereafter sent in due course for grant of approval, however, respondent Nos.1 to 3 neither granted nor rejected those approvals. Many reminders were also given. Ultimately, the petitioners along with other employees approached this Court by filing Writ Petition No.10689 of 2017 seeking directions to the respondent No.3 to decide the proposal dated 23.06.2010 and 01.08.2012. The said petition came to be allowed and directions were given to respondent No.3 to decide those proposals expeditiously and preferably within four months by order dated 12.09.2017. Thereafter the impugned order came to be passed on 05.01.2018. As regards petitioner No.1, it was directed that he should submit his caste validity certificate within a period of six months and also he should submit the undertakings. As regards petitioner Nos.2 and 3, they were granted approval, however, to all the three petitioners, the approval was granted on 05.01.2018 with the service benefits from that date and it was specifically mentioned that the earlier services will not be counted for any reason.

Hence, this petition.

5. The first and the foremost fact that is to be noted is that the petitioner No.1 appears to have filed the validity certificate within the stipulated period before respondent No.3, which was through respondent No.4 on 30.05.2018 and it has been received by respondent No.3 on the same date. Now, the affidavit-in-reply has been filed on behalf of respondent Nos.1 to 3 by one Dr. Prashant s/o Panditrao Magar serving as Joint Director of Higher Education, Jalgaon, District Jalgaon. Perusal of the affidavit-in-reply appears to be on a different points. He had given his own reasons to object the petition. There is absolutely no reason in the impugned order dated 05.01.2018 or in the affidavit as to why the approval is not from the date of appointment. in the affidavit-in-reply some additional ground has been given which cannot be considered at all. The normal rule is to grant the approval from the date of the appointment. The concerned authority should give reasons for any deviation. As regards petitioner Nos.2 and 3, they were fulfilling all the criterias and their selection is as per the advertisement and also the Bindunamavali, still why they have been not granted approval from the date of their appointment has not been mentioned in the impugned order. It is not in dispute that the petitioner No.1 was working with respondent Nos.4 and 6 since 15.05.2010 and petitioner Nos.2 and 3 were working since

17.05.2010, in view of their appointment order dated 15.05.2010.

6. Considering the above, the petition deserves to be allowed.

Hence, the following order :-

ORDER

- i) The Writ Petition stands allowed.
- ii) The impugned communication dated 05.11.2018 to the extent of refusing to grant continuity in service, arrears of salary and other service benefits from the initial date of appointment till the date of approval i.e. 05.01.2018, stands set aside.
- iii) The salary and arrears in view of such grant of continuity in service be paid within a period of six months after calculating it.
- iv) Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm