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wp 14689.23 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14689 OF 2023

Varad Sanjay Muthal
Age 26 years, Oc. Service,
R/o. Samatanagar, Rajmata Colony,
Savedi, Ahmednagar.

.. PETITIONER

VERSUS

1. State of Maharashtra
through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. Deputy Director of Education,
Pune Division, Pune,
17, Dr. Babasaheb Ambedkar Road,
Camp, Pune.
3. Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
Zilla Parishad Campus, Ahmednagar.

.. RESPONDENTS.

Mr. S.V. Dixit, Advocate for petitioner
Mr. A.M. Phule, AGP for respondent Nos. 1 to 3.

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

RESERVED ON : 8TH APRIL, 2024
PRONOUNCED ON : 16TH APRIL, 2024.

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

1. The petitioner approached this Court under Article 226 of the Constitution of India impugning the order dated 2..2.2023, passed by the Deputy Director of Education – respondent No.2, thereby declining the proposal to include petitioner's name in Shalarth System; further seeking consequential directions to release the salary and arrears.

2. Mr. S.V. Dixit, learned advocate appearing for the petitioner submits that Hind Seva Mandal – Educational Trust run Modern High School, at Akole. Two posts of Laboratory Assistant were vacant at Modern High School and those were advertised on 13.11.2018. Petitioner being qualified, made application in response to the advertisement. He was interviewed and selected after following due process of law. Consequently, appointment order dated 1.1.2019 came to be issued in his favour. The management submitted proposal seeking approval to the petitioner's appointment on 26.4.2019. The respondent No.2 Deputy Director of Education granted approval to such appointment on non-grant basis.

3. Mr. Dilip Vinayak Bhalerao was working as Laboratory Assistant on grant-in-aid section on the post of Laboratory Assistant. On account of his unfortunate death a vacancy arose in the school. The management passed resolution to transfer the services of the petitioner from un-aided to aided section of Modern High School. Consequently, transfer order dated 30.4.2007 came to be issued to the petitioner. The petitioner joined the services on 2.5.2020. The proposal for approval of petitioners transfer / appointment from un-aided to aided section was forwarded to the respondent No.3 – Education Officer. The respondent No.3 granted approval to posting of petitioner as Laboratory Assistant on

aided section. Thereafter, the proposal for inclusion of the petitioner's name in 'Shalarth System' was forwarded to the respondent No.2. Respondent No.2 vide impugned order dated 2.2.2023, rejected the proposal for inclusion of petitioner's name in Shalarth System on the ground that there was a ban on the recruitment of non-teaching posts. Mr. Dixit would submit that once approval to transfer is granted in favour of the petitioner by the competent authority i.e. Education Officer, the respondent No.2 had no occasion to refuse the proposal for inclusion of the petitioner's name in the Shalarth System. To buttress his arguments, he relies upon the orders passed by this Court in ***W.P. No. 8966 of 2021 in the case of Amol Sangar Vs State of Maharashtra dated 21.2.2022***; the order dated 13.7.2023 in ***W.P. No. 8643 of 2022 in case of Rahul Thosare Vs. State of Maharashtra and order dated 3.7.2023 in W.P. No. 7292 of 2023 in case of Vinayak Dudhate vs. State of Maharashtra***.

4. Mr. A.M. Phule, learned AGP appearing for respondent Nos. 1 to 3 supports the impugned order.

5. We have considered the submissions advanced by learned advocate for respective parties and perused the record tendered into service. It appears that pursuant to advertisement dated 30.11.2018, the petitioner was appointed as Laboratory Assistant on un-aided division vide order dated 1.1.2019 at Modern High School and Junior College, Akole. The Deputy Director of Education granted approval to the petitioner's appointment vide order dated 26th April, 2019. Thereafter, the post of Laboratory Assistant on aided division of Modern High School fell vacant on account of unfortunate death of Mr. Bhalerao, who was occupying the said post. The school management transferred the services

of the petitioner against the vacancy on aided division vide order dated 30.4.2020. The petitioner joined as Full Time Laboratory Assistant w.e.f. 2.5.2020. the Education Officer granted approval to the transfer of the petitioner vide his order dated 20.7.2020. Consequently , proposal was forwarded to the office of respondent No.2 for inclusion of the petitioner's name on Shalarth System. It appears that certain deficiencies were pointed out by the office of the respondent No.2. Those deficiencies were removed by the school authorities. However, respondent No.2 vide order dated 2.2.2023, declined to grant proposal for inclusion of petitioner 's name in Shalarth system giving the reason that there was a ban on recruitment of non-teaching staff.

6. Pertinently, the record indicates that the petitioner was initially appointed on an un-aided division and his services were transferred from un-aided to aided division. His initial appointment on the un-aided division and subsequent transfer on aided division has been duly approved by the competent authorities. However, the proposal to include the petitioner's name on Shalarth System is rejected giving some different reason. Record indicates that as per the staffing pattern, the post of Laboratory Assistant was available with the school and it was occupied by Mr. Dilip Bhalerao. On his sudden death, the petitioner has been transferred against said vacancy. Apparently, this is not a case of new appointment. In fact, it is a case transfer from un-aided to aided division The transfer is duly approved by the Education Officer. In this background, the respondent No.2 had no reason to dig any other reason while dealing with the proposal for inclusion of petitioner's name in the Shalarth System. This Court in the case of ***"Amol Sangar"*** (cited supra) observed in para. No.5 as under :-

“5. When the aforesaid facts are not in dispute, we see no reason for the Deputy Director, Education to again dig out the issue of grant of approval to the appointment of Petitioner to aided post upon his transfer from unaided post, when it comes to inclusion of the name of the Petitioner in the Shalarth system. The Shalarth System has been initiated for facilitating the on-line payment of salary to the school employees by streamlining the whole system. When such is the object of the Shalarth system, the Deputy Director, Education cannot again look into the irregularity or otherwise caused in granting the approval to the appointment of the school employees by the Education Officer.”

7. Similarly, in the case of ***Pramod Prabhakar Pophale vs. State of Maharashtra reported in 2019(3) Bom.C.R. 273*** this Court held that once approval is granted by Education Officer to the appointment of school employee, the Deputy Director, Education would have no jurisdiction to refuse to enter the name of the school employee in Shalarth System. We find that the aforesaid legal principles espoused by this Court would squarely apply to the present case.

8. In that view of the matter, we proceed to pass the following order :-

ORDER

[a] The writ petition is partly allowed.

[b] Impugned order dated 2.2.2023 passed by the respondent No.2 is quashed and set aside;

[c] Respondent No.2 shall forthwith grant approval to proposal received from the respondent No.3 Education Officer for inclusion of petitioner's name in Shalarth System and take further steps to release his salary.

[d] Writ petition is disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-