

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7200 OF 2021

Rupali Pravin Kaware

...Petitioner

Versus

The State Of Maharashtra Thru The
Secretary, School Education Department
And Ors.

...Respondents

Mr. Narendra Bandiwadekar, Senior Advocate a/w Vinayak
Kumbhar, Rajendra Khaire, Aniket Phapale i/b Ashwini
Bandiwadekar for the Petitioner

Mr. V.M. Mali, AGP for the Respondent Nos. 1 and 2/State.
Mr. Sachin Bhandan for Respondent Nos. 3 and 4.

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 12 APRIL 2024

ORAL JUDGMENT (PER : NITIN JAMDAR, J.)

. Rule. Rule is made returnable forthwith. Writ Petition is heard finally with the consent.

2. The Petitioner, who is working as '*Shikshan Sevak*' with Respondent No.4/Junior College run by Respondent No.3/ Education Institute has challenged the order passed by Respondent No.2/the Deputy Director of Education, Mumbai Region, Mumbai

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dated 7 September 2021, refusing to grant approval sought by the Respondent Management to appointment of the Petitioner as *Shikshan Sevak*.

3. At the outset, it must be noted that the impugned order is passed based on the proposal submitted by the Respondent/Management and the order is directed against the Respondent/Management. The proposal for approval was submitted by the Respondent/Management to seek a grant-in-aid for the appointment of the Petitioner. If the proposal is rejected, the consequence is that the Respondent/Management will not receive the grant from the State Government for the salary to be paid to the Petitioner.

4. More than a decade ago, Full Bench of this Court in the case of *St. Ulai High School and Anr. v/s. Devendra Prasad Jagannath Singh and Anr.*¹ settled the legal position that approval is a matter between the management and the State Government, except for certain contingencies, such as pension, surplus etc where teacher maybe involved. Therefore, a challenge to the rejection of the proposal for approval for an appointment should be raised by the management who has submitted the proposal, or at least by the management along with the employee. This is because several factual grounds have to be stated on oath by the management to assail the order of rejection. Yet, we are encountering several petitions filed by individual

¹ 2007 (1) Mh. L.J.

employees where the management is made a respondent. If the management does not challenge the rejection of its proposal to receive a salary grant for the appointment made, the consequence will be that the management will have to pay the salary to the employee it has appointed as per the Rules from its own funds.

4. In the present case, we proceed to examine the merits of the challenge only by way of indulgence because the petition has been pending since 2021 and a detailed reply has been filed by the Respondent-Management, which supports the Petitioner.

5. The Respondent/Management had submitted a proposal, seeking approval for the Petitioner's appointment first on 20 May 2017 which was rejected on 23 May 2017. The Respondent/Management addressed correspondence on 21 April 2018 submitting its explanation.

6. By the impugned order dated 7 September 2021, the proposal of the Respondent/Management was rejected on 3 counts. Firstly, even though the appointment was on 1 January 2016, the proposal was submitted with a delay of one year. Secondly, before the appointment, the roster was not examined and thirdly, there exists a backlog for candidates from the reserved category and with a backlog being of 5, there was no vacancy for the appointment of Petitioner in the open category. This order is challenged as stated earlier by the Petitioner/employee with Respondent No.4 filing a reply affidavit.

7. On the first ground that there was a delay, it is Respondent No.4 who has to give an explanation for the delay, because it is Respondent No.4 who has submitted the proposal after a period of 1 year. We have noted the Reply Affidavit filed by Respondent No.4. It is stated in the Reply Affidavit that the proposal was submitted immediately, but Respondent No. 2 Authority refused to accept and stated that it be submitted when the camp would be conducted, which will be informed. It is contended that camp was not conducted and therefore there was a delay. When Respondent No.4 was called upon to explain the delay, it was expected that the same should be explained with particulars. The reply gives no particular whatsoever, except vague statements. It is now that the learned counsel for Respondent No.4 states that better particulars would be given.

8. Regarding the second ground regarding examining the roster, the learned counsel for the Petitioner points out that the same was examined by the Education Officer, as can be seen by the endorsement annexed at Exhibit 'L' to the petition. According to the learned AGP, this was not examined by the proper Authority.

9. The third aspect is regarding the backlog. The Petitioner has pointed out the roster which is exhibit 'G' to the Management's reply (page 84) showing that there are three vacant posts for the open category. In the reply affidavit Exh. '2' filed by the State, roster shows that the available open category posts in the table are shown as

5. In the analysis of the table, the Authority has referred to the excess posts being appointed. In the reply affidavit, however there is no clarity as to the number of vacant posts in the open category. This is relevant in view of the decision relied upon by the Counsel for the Petitioner, that is of Single Judge of this Court in the matter of *The President Sudhagad Education Society and Ors. v/s. The Deputy Director of Education and Anr.*² and in the matter of *The Deputy Director of Education and Anr. v/s. Shri Hemant Kishan Gavale and Ors.*³ Based on these decisions, it was contended that approval to the appointment in the open category cannot be denied only on the ground that there was a backlog of reserved category candidates.

10. The existence of the vacancies in the open category is unclear. The chart and its analysis differ. In some places, vacancies in the open category are shown as three and in others as five. This variance is explained in the reply affidavit. Therefore, on all these three counts, we are of the opinion that the Deputy Director needs to re-examine the issue of grant of approval.

11. On the aspect of delay, it is for the Management to give better particulars to the Deputy Director explaining the delay. On the second aspect regarding whether the roster was examined and certified, the Respondent/Management will have to produce

² Writ Petition No. 4635 of 2009 dated 16 July 2009

³ Letters Patent Appeal No. 63 of 2010 dated 5 May 2010

necessary evidence in that regard. As regards the third aspect regarding the vacancies, the Deputy Director will have to take into consideration the above-mentioned law laid down by this Court and then determine, whether, at the time of appointment of the Petitioner, there existed vacancies in the open category and if so, the legal position laid down in the decision above will have to be made applicable.

12. In these circumstances, we quash and set aside the impugned order. The proposal of the Petitioner submitted by the Respondent No.4 Management, stands restored to the file of the Deputy Director. The Deputy Director will give an opportunity to Respondent No.4 and in this case to Petitioner also, as the petition has been pending for a long, and pass the necessary order within a period of ten weeks, keeping in mind the observations and the legal position referred above.

13. Rule is made absolute in the above terms. Writ Petition is accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)