

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15088 OF 2022

Mansi Manoj Gandle

...Petitioner

Versus

State Of Maharashtra And Ors.

...Respondents

Mr. Nikhil D. Waje, for Petitioner.

Mr. K. S. Thorat, 'B' Panel Counsel, for Respondent/State.

Mr. Vishesh Srivastav, for Respondent No. 4.

Mr. Dinesh B. Khaire a/w. Purva S. Pradhan, for Mr. Anant Murlidhar Dani (Deputy Education Officer).

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

DATE : 7 MAY 2024

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. Heard the learned counsel for the parties.

2. The Petitioner has challenged the order passed by Respondent No.2 Education Officer (Secondary), Zilla Parishad, Pune dated 21 October 2022 rejecting the proposal submitted by Respondent No.4-Management regarding the Petitioner's appointment as Junior Clerk. On 5 September 2007, a vacancy of Junior Clerk arose in the school because one Mr. Bhupendra Shah was promoted. This promotion was approved on 17 December 2018. Thereafter on 2 May 2019, the Respondent Management wrote to Respondent-Education Officer seeking permission to publish advertisement for

filing up the vacancy of Junior Clerk. There was no response. Thereafter, the Respondent-Management published advertisement. Pursuant to this, the Petitioner had applied and Petitioner participated in the selection process which included interview, and after shortlisting some candidates, the Petitioner was appointed as Junior Clerk by an order dated 31 August 2019. On 18 February 2020, the Respondent- Management submitted a proposal for approval of the Petitioner's appointment to the Respondent No.2 - Education Officer. There was no response and the Petitioner filed Writ Petition (St.) No. 96990 of 2020 which was disposed of directing the Education Officer to decide the proposal within three months.

3. Respondent No. 2 communicated to the Respondent-Management on 4 March 2021, raising certain queries which included a ground that as per the Government Resolution dated 6 February 2012, permission of the Education Department was not taken before the advertisement and there is ban on recruitment as per Government Resolution dated 2 May 2012 and there is staffing pattern from 28 January 2019, because of which the proposal is liable to be rejected. The Respondent Management wrote to the Education Officer giving explanation to all the queries. Thereafter, on 23 April 2021, Respondent No. 2 rejected the proposal on the grounds of non submission of roster verified by Backward Class Commissionerate, and permission for advertisement not being taken and on the Government Resolution on 7 March 2019.

4. Thereafter, the Petitioner has filed writ petition in this Court challenging the said order. The Division Bench of this Court directed the Respondent- Education Officer to verify the education roster and take decision. Since this was not done, a contempt notice was issued. Thereafter, an order came to be passed on 21 October 2020 that before appointing the Petitioner and issuing advertisement permission was not taken as per the Government Resolution dated 6 February 2012. This is the only ground taken in the impugned order.

5. When the petition came up on board on 19 January 2024, we had noted the reply affidavit filed on behalf of Respondent No. 2- Education Officer by Mr. Anant Murlidhar Dani, Deputy Education Officer, wherein it was stated that updated roster was not produced by the school Management and school Management had not taken permission to publish the advertisement. Since this new ground regarding roster was referred in the impugned order and the Petitioner had to repeatedly approach this Court, the Petitioner pointed out that the issue stated in the impugned order is covered by various decisions of this Court.

6. We had issued notice to Mr. Anant Dani to show cause why the costs should not be imposed on the State and why it should not be recovered from him. Pursuant to the notice, the Deputy Education Officer Mr. Dani appeared and has filed reply affidavit wherein he has taken a categorical stand that the reply affidavit was filed on the instructions of the Education Officer - Ms. Sunanda

Wakhare. He has also annexed the written instructions dated 11 September 2023 given by Ms. Sunanda Wakhare. The learned counsel appearing for Mr. Anant Dani asserts that it was on the instructions of the Education Officer Ms. Sunanda Wakhare that reply was filed.

7. Reply dated 22 April 2024 is now filed by the Education Officer - Ms. Sunanda Wakhare, wherein surprisingly, a stand is taken that the earlier affidavit was filed without bringing contentions to her notice, but it is accepted that she had authorized Deputy Education Officer Mr. Dani by a letter dated 11 September 2023.

8. In the meantime, on 8 February 2024, another affidavit in reply is also filed on behalf of Respondent No.2 by one more Deputy Education Officer – Mr. Nilesh Dhanapune wherein apart from the grounds taken in the affidavit filed by Mr. Anant Dani, three more grounds have been added in the reply. To make the matter worse, the Education Officer Ms. Sunanda Wakhare pursuant to the notice has filed affidavit stating that affidavit filed by Mr. Dani was without bringing to her notice the contents, as explained above. On the other hand, Mr. Dani asserted that the affidavit was filed in consultation with the Education Officer Ms. Sunanda Wakhare. This reflects sorry state of affairs in the Education Department.

9. The law is settled decades ago in the case of *Mohindar Singh Gill & Anr. V/s. The Chief Election Commissioner New Delhi &*

*Ors.*¹ by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court observed thus :

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

Thus, the orders passed by public authorities giving certain reasons must be judged on the basis of those reasons alone and it is not permissible to add new grounds as the matter goes on.

10. In the present matter, first affidavit expands the ground of rejection. Subsequent affidavits further expand the grounds thereof. All these new grounds were required to be dealt with by the

¹ (1978) 1 SCC 405.

Petitioner either by amending the Petition or filing rejoinder.

11. As regards the ground of rejection given in the impugned order that permission is not taken for advertisement and appointment, the Petitioner has stated on oath that Respondent- Management had sought permission but it was not granted and thereafter Respondent-Management had no option but to continue and in these circumstances the Petitioner came to be appointed. The following decisions of this Court cover this position. These are *Gramvikas Shikshan and Ors Mandal Vs. State of Maharashtra and Ors.*² *Sandiprao V. Savant Vs. President / Secretary, Agrani Shikshan Prasarak Mandal and Ors.*³, *Vidyavardhini Shikshan Prasarak Mandal, Govindpur, Osmanabad and Ors. Vs. The State of Maharashtra and Ors.*⁴ and *Vidarbha Youth Welfare Society and Anr. Vs. State of Maharashtra and Ors.*⁵ In spite of law already being settled, yet the same ground is taken. In the light of the settled position, the reasons given in the impugned order cannot be sustained and it is accordingly set aside.

12. As we note, the entire state of affairs has caused needless harassment to the Petitioner. Therefore, we had issued notice to these officers that why the costs should not be imposed and why the liability should not be fastened on these officers. Now we have three affidavits before us. In two affidavits, the deponents have taken

2 Writ Petition (St.) No. 4493 of 2022 decided on 26 April 2023.

3 Writ Petition No.3708 of 2018 decided on 23 August 2021.

4 Writ Petition No.3901 of 2016 decided on 8 February 2018.

5 2022(4) Mh.L.J. 69.

contrary stand. It is for the State Government now to determine who should bear the costs in this case, if the State Government decides to recover from its employees.

13. In these circumstances, the proposal of the Respondent-Management is restored to file of the Education Officer, who will follow the methodology as laid down in the case of *Nitin B. Tadge Vs. State of Maharashtra*⁶ as under:

“PART- II

A. (i) We direct that upon receipt of a proposal seeking approval, the Educational Authority, as per the methodology laid down in the Government Resolution dated 6 February 2012, will communicate the shortfalls/objections in the proposal submitted by the Management/Employer as the case may be calling for explanation giving them reasonable time. Upon receipt of such explanations, the Educational Authority will examine the explanation and pass a reasoned order.

(ii) If any judicial pronouncement is cited regarding the shortfalls/ objections in the explanation, then in the reasoned order, the Educational Authority will specifically address the legal position laid down by the said judicial pronouncement.

(iii) It is emphasized that avoiding referring to and avoiding considering the legal position laid down in the judicial pronouncement would be viewed seriously and may result in action under the contempt jurisdiction of this Court.”

14. The Education Officer to take decision and communicate the same to the Respondent- Management within a period of eight weeks. As we have stated above, the Respondent- State will pay costs of Rs.25,000/- to the Petitioner. It is open to the State to fix the responsibility on either of these officers as

6 Writ Petition No. 204 of 2019 decided on 16 April 2024.

regards the costs.

15. If the Respondent-Education Officer proceeds to grant the Petitioner's proposal as prayed for the consequential benefits/ actions be taken.

16. Writ petition is accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)