



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1803 OF 2020

National Education Society and others V/s State of Maharashtra and others

WITH

WRIT PETITION NO.1744 OF 2020

Shri Nagpur Gujrat Mandal and others V/s State of Maharashtra and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. Anand Parchure, Advocate for petitioners.

Ms. N.P Mehta, Addl. Government Pleader for respondent nos.1 to 3.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : APRIL 02, 2024

Vide order dated 14th August 2015, the petitioner was appointed as Junior Clerk (Sewak) and as per the policy as is reflected in the Government Resolution dated 25th November, 2005, was entitled to receive office honorarium of Rs.2000/-. The proposal for approval was submitted to the respondent-Education Officer who vide communication 4th March 2020 refused to grant approval for a period 14th August 2015 to 22nd August 2019, however, further proceeded to grant approval for a period of three years from 23rd August, 2019 i.e. the date on which staffing pattern was approved for a period of three years on fix honorarium amount of Rs.2000/-.

2. The contention of Mr. Parchure, learned counsel for the petitioners is that the appointment of the petitioner on the post of Junior Clerk Sewak is on 14th August, 2015. The staffing pattern, which is approved by the Education Officer for the year 2015 onwards, speaks of existence of one sanctioned post of Junior Clerk (Sewak) against which the petitioner was appointed. Merely because the

staffing pattern was not approved by the respondent-Education Officer, that by itself, will not dis-entitle the petitioner to claim honorarium amount for the period from 14th August, 2015 for a period of three years and thereafter salary on regular establishment. According to Mr. Parchure, the grant of approval by the Education Officer with effect from 4th March, 2020 with a rider that the approval is not granted for a period from 14th August 2015 to 22nd August, 2019 is without any legal basis, particularly when there is existing a sanctioned and vacant post of Junior Clerk Sewak. He would claim that the Education Officer, in such an eventuality, should have granted approval for a period of three years as a Junior Clerk Sewak and thereafter should have brought the petitioner on regular establishment. So as to substantiate his contention that the aforesaid act of the respondent-Education Officer is illegal, he has invited our attention to the approved staffing pattern for a period 2015 onwards and similarly, the communication whereby the approval is granted with effect from 23rd August 2019 i.e. from the date of approval of staffing pattern.

3. As against above, Ms.Mehta, learned Additional Government Pleader would invite our attention to the G.R. dated 25th November, 2005 and subsequent G.R. dated 7th February, 2023 so as to canvass that Junior Clerk (Sewak) is entitled to honorarium of Rs.2000/- for initial three years and that too in case if he is appointed against a clear sanctioned vacancy. According to her, the approval of staffing pattern is from the date i.e., from the date of 23rd August 2019 and as such the approval was rightly so granted from the said date.

4. We have considered the rival submissions.

5. The appointment of the petitioner could be inferred from 14th August, 2015 on the post of Junior Clerk (Sewak) during which tenure there appears to be one sanctioned post of Junior Clerk (Sewak), however, it is not clear whether the said post was vacant and against the same, the petitioner came to be appointed.

6. Apart from above, the said issue is not at all looked into by the Education Officer in the order impugned as to whether a vacancy or the post of Junior Clerk (Sewak) was existing on the date of the appointment issued to the petitioner i.e. on August 20, 2015.

7. As such, we are of the view that the said issue needs to be looked into by the Authority by recording a finding that on the date of the appointment of the petitioner there exists a vacancy on the post of Junior Clerk (Sewak) against which he was appointed. Even otherwise, the vacancy against which the petitioner was appointed was duly approved and considered by the Education Officer in his communication dated 4th March, 2020. However, the foundation for the same was the approval of staffing pattern from 23rd August 2019 and has granted post facto approval.

8. As such, we deem it appropriate to dispose of the present petition with directions to the petitioner and the petitioner to appear before the Deputy Director of Education on 29th April, 2024 with the complete details as to existence of a vacancy of the post of Junior Clerk (Sewak) on the date of appointment to the petitioner i.e. on 14th August 2015. The Deputy Director of Education, if so satisfied that there exists of a vacancy of the post of Junior Clerk (Sewak) as on 14th August 2015 as per the work load and the number of

the students available in the petitioner-institution, shall consider modifying the order of approval granted in favour of the petitioner with effect from the said date and shall initially place the petitioner on the said post for a period of three years making him entitled for honorarium, as has been reflected in the above referred Government Resolution.

9. Consequent thereto, if the aforesaid condition is satisfied, after completion of three years, he can be issued an order of confirmation in service from the very said post.

10. Needless to clarify that the petitioner, in such eventuality, viz., if so found entitled to be grant of approval on the post of Junior Clerk (Sewak) with effect from 14th August 2015 against the sanctioned post, he shall be entitled for all the emoluments as per the existing policy of the Government.

11. The petition as such stands partly allowed. No costs.

12. Needless to clarify that the Deputy Director of Education shall decide the claim of the petitioner-employee as expeditiously as early as possible and in any case within a period of three months from the date of receipt of the order.

13. We are informed that the issue raised in both these petitions are similar and identical and as such by consent disposed of by this common order. For the purpose of convenience, the facts in Writ Petition No.1744 of 2020 are taken into account and the following order shall govern the issue in both these petitions.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)