



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

WRIT PETITION NO.2894 OF 2024

Shri Dilip s/o Shivilal Rathod ... Petitioner
- Versus -
State of Maharashtra and others ... Respondents

Mr. S.S. Shingane, Advocate for the petitioner.
Mr. N.S. Rao, AGP for respondent nos.1 to 5.
Mr. N.S. Warulkar, Advocate for respondent no.6.

CORAM : BHARATI DANGRE &
ABHAY J. MANTRI, JJ.

DATED : OCTOBER 03, 2024.

PC. :

1. The petitioner, who is appointed in the respondent no.6-School on the post of 'Peon' on 29.03.2003, belong to V.J. category.

Pursuant to his appointment, approval was granted to his appointment, till he improved his qualifications and made himself eligible for being appointed as 'Assistant Teacher'.

2. The petitioner would place reliance upon a Government Resolution issued by the Department of Education and Sports on 10.06.2005, which permitted the non-teaching employees, on acquiring the necessary educational qualifications, subject to the availability of the post in the Secondary or Higher Secondary

School/Junior College for being appointed as 'Shikshan Sevak' and for extending the benefit of the salary/honorarium of 'Shikshan Sevak' along with all terms and conditions attached to it.

The relevant clause in the Government Resolution also stipulate that the services rendered by the non-teaching staff, who is so appointed as 'Shikshan Sevak', will be counted for the purposes of pensionary benefits.

3. As the petitioner improved his qualification and became eligible for being appointed as 'Shikshan Sevak' by an order dated 04.09.2023, he was issued an order of appointment, subject to several stipulations contained in the order, governing his services by the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 and the rules made thereunder.

4. It is pertinent to note that, though it is an order of appointment, in paragraphs 2, 5, 7 and 8, the authorities have referred to the appointment as promotion.

In any case, it is not in dispute that from 04.09.2023, the petitioner joined the post of 'Shikshan Sevak' in a vacant post of 'Assistant Teacher' (Secondary School Class 9 and 10) and since then, he continue to hold the same.

5. On his proposal being forwarded to the Education Officer (Secondary), by order dated 12.10.2023, the same was rejected by stating that on 'Pavitra Portal', if a Class-IV employee acquire the necessary educational qualification, it contemplate effecting the appointment by direct recruitment but not by promotion and since the present recruitment is effected through 'Pavitra Portal', it is not understood as to on what basis the proposal

is forwarded, since it is of promotion and there is no procedure contemplated on the portal to that effect and, therefore, the proposal is rejected.

6. We fail to understand as to, if it is the policy decision of the State Government to encourage the non-teaching staff to be appointed as 'Shikshan Sevak', provided he acquire the necessary educational qualifications and it is clarified that the person on acquiring educational qualification shall be appointed on the post of 'Shikshan Sevak', subject to availability of a vacancy and the services rendered in the non-teaching staff, shall be counted for the purpose of pensionary benefits, then why the benefit accruing thereupon, is denied, in this case.

The Education Officer, while rejecting the order, has made a reference to the 'Pavitra Portal' but we are not impressed by his reasoning as in terms of the policy decision contained in the Government Resolution dated 10.06.2005, the petitioner had acquired the necessary educational qualifications, for holding the post of 'Shikshan Sevak' and was accordingly issued with an order of appointment, though the Management has termed it as an order of promotion, but we find the phraseology misplaced as there can be no promotion from non-teaching post to the teaching post and what is offered to him is an appointment letter appointing him as 'Shikshan Sevak'.

7. The learned counsel for the petitioner has placed reliance on the decision of the Division Bench in case of *Usha Baliram Masal .vs. Hind Seva Mandal, Ahmednagar and others, (Writ Petition No.3167/2019) delivered on 30.09.2019*, where,

relying upon Clause 8 of the Government Resolution, direction was given to the Management to consider the claim of the petitioner for appointment as 'Shikshan Sevak' in terms of the Government Resolution dated 10.06.2005 and the Education Officer was directed to consider the proposal in-consonance thereof.

8. Finding substance in the argument advanced on behalf of the petitioner, we find the rejection of the proposal at the end of the Education Officer (Secondary), Zilla Parishad, Buldhana to be unsustainable, as the petitioner is already issued an order of appointment in furtherance of Clause 8 of the Government Resolution and we declare the appointment of the petitioner to be an appointment as 'Shikshan Sevak' in terms of Clause 8 of the Government Resolution, dated 10.6.2005.

Needless to state that the Education Officer shall be duty bound to accord approval to his appointment with the honorarium that is applicable to the post of 'Shikshan Sevak' from the date of his appointment.

The service rendered by the petitioner as 'Peon' in non-teaching category shall be counted for the purposes of pensionary benefits.

9. With these directions, the writ petition is made absolute.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)