



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

Writ Petition No.5423/2010

Prakash Manohar Kulmethe,
Aged about 46 years,
R/o.-Opposite Navin Macchi Market
Binba Ward, Chandrapur, District Chandrapur. Petitioner.

Versus

1. State of Maharashtra
through its Secretary,
Tribal Development Department, Mantralaya, Mumbai 32.
2. Additional Commissioner of Tribal Development Nagpur.
3. Project Officer, Integrated Tribal Development Project
Chandrapur.
4. Sevalal Shikshan Sanstha Dhanoli
Through its Secretary,
Tlq. Korpana, Distt.Chandrapur.
5. Gopikabai Sangda Patil Madhyamik Aashramshala,
Through its Head Master Rajura, District- Chandrapur.
6. ~~Shri A.R. Madavi~~
~~Aged about Major, Occupation Untrained Primary Teacher~~
~~R/o C/o Gopikabai Sangda Patil Madhyamik Aashramshala,~~
~~Rajura, District Chandrapur.~~

R-6 substituted as per Court's order dated 25-09-2012

- 6.Ku. Vanashri Saurangpate
Aged about Major
R/o C/o Gopikabai Sangda Patil Madhyamik Ashramshala,
Rajura, District Chandrapur. Respondents.

Amended as per Court's order dated 25-09-2012

Mr. Kalyan Chiwarkar, Advocate for the petitioner.
Mr. Ghogre, AGP for the respondent nos.1 to 3.

CORAM : Nitin W. Sambre & Abhay J. Mantri, JJ
DATE : 05-01-2024.

Oral Judgment (Per Nitin W. Sambre, J.)

Heard.

2. The challenge is to the impugned communication dated 11-01-2010, issued by the respondent no.2. The said communication is issued in compliance with the order dated 24-07-2009 passed in Writ Petition No.2224/2007 by this Court, whereby the petitioner's claim to the post of Assistant Teacher was negated.

3. Amongst other, the submissions made by the learned Counsel for the petitioner are that the petitioner is superannuated. According to him, the petitioner is not seeking reinstatement with backwages, however, his claim may be considered for grant of pensionary benefits in view of the claim granted by this Court in relation to the similarly placed non-teaching staff as ordered in Writ Petition No.5431/2010 decided on 19-06-2023.

4. So as to substantiate the contention, the learned Counsel for the petitioner would invite the attention of this Court to the fact, that the petitioner was initially appointed on the post of Assistant Teacher vide order dated 25-06-1992 as could be noticed from page 251 of the petition. According to him, after the petitioner joined the service, he was continued in the employment based on the approval order passed by the Project Officer

Integrated Tribal Development Project dated 09-06-1994 and further order dated 22-12-1994, by which the approval was granted until further orders. The learned Counsel for the petitioner would invite our attention to the order of the State Government dated 03-07-2006, whereby the school in which petitioner was working was attached to another Ashram School. According to him, the above attachment order speaks of absorption of services of all the existing teaching and non-teaching staff with whom the petitioner was working. That being so, the petitioner's services as an Assistant Teacher ought to have been absorbed by the respondents. He would then invite our attention to the fact that the petitioner's claim for absorption was negated ignoring his legitimate claim. According to him, the Additional Commissioner holds the candidature of the petitioner disqualified for the purpose of absorption merely on the ground that the petitioner has not improved his qualification by taking recourse to postal D.Ed. As the said order was passed without hearing the petitioner, pursuant to the direction dated 24-07-2009 issued by this Court in Writ Petition No.2224/2007, the order impugned came to be passed.

5. The contentions of the learned Counsel for the petitioner are; (a) that the approval order was passed by the respondent Authorities on 22-12-1994, thereby granting approval until further order. As such it is claimed that by virtue of said approval order, petitioner's services were continued in the earlier

school till the order of attaching the same to another school was passed i.e. till 2006. He would further urged that it was the policy of the State Government to grant extension to acquire D.Ed. qualification by adopting postal D.Ed. course. On the day when the school was attached such extension was in operation. The learned Counsel for the petitioner would also invite our attention to the fact that the order dated 29-09-1995, thereby modifying the approval making it subject to the improvement of educational qualification i.e. acquiring the qualification of D.Ed. within a period of 5 years was neither served nor accepted upon till the petitioner's services were not absorbed in the school to which the school of the petitioner was attached. According to him, petitioner was continued in service by the respondent even after the lapse of five years of period from the date of alleged service order of approval.

6. In this backdrop, according to the learned Counsel for the petitioner, the similarly placed non-teaching employees approached before this Court through Writ Petition No.5431/2010. This Court in paragraph 20 onward has observed thus :-

"20. It is incontrovertible that the transferee school was bound to absorb the existing and qualified employees of the Adiwasi Loksewa Ashramshala, Kolsa. It is not in dispute that the petitioners fall within the category of "existing employees". The petitioners are held dis-entitled to absorption on the premise that the petitioners have not

satisfied the authority that the appointments are made in accordance with law."

Based on the aforesaid observations, the services of the said employees were absorbed who were not superannuated, however such employees who were superannuated, were treated to be continuous in service till the date of their superannuation and were granted retiral benefits accordingly.

7. While countering the aforesaid submissions, the submissions of learned Assistant Government Pleader are, the orders impugned are in accordance with the existing policy of the Government. According to him, its an admitted position on record; that (a) the petitioner was neither selected and nor appointed in accordance with the prescribed selection process, (b) the petitioner was not holding appropriate qualification for the post of Assistant Teacher and (c) though period of 5 years was granted to the petitioner to improve his qualification, the petitioner has failed to acquire the same within the time stipulated i.e by 2000. In this backdrop, learned Assistant Government Pleader would urge that the petitioner's case cannot be palced at par with the case of other non-teaching employees and also on merits the petitioner would not entitle for any relief.

8. We are appreciated the aforesaid submissions.

9. The fact remains that the initial appointment of the petitioner is shown to be of 25-06-1992, however, perusal of the

first approval order which is produced by the petitioner is for a period from 01-07-1993 i.e. the date of joining. The said approval thereafter appears to have been continued for a period from 01-07-1994 until further orders.

10. As such the fact remains that from the date of appointment of the petitioner i.e. 01-07-1993, there exists an order of approval. In absence of there being order of his termination the petitioner has to be treated as continuous in service for a period from his initial appointment i.e. from 01-07-1993 and his permanent approval relegate back to the date of his appointment. As such it has to be inferred that petitioner was in continuous service for more than 12 years.

11. The record further depicts that the school in which petitioner was working came to be transferred vide order dated 03-07-2006. Vide order dated 22-01-2007 the petitioner was not treated to be qualified and was held to be not qualified for the purpose of absorption of services in the respondent no.5-School i.e. he was not holding D.Ed. qualification.

12. While the aforesaid order was passed following issues were not taken into account viz- the petitioner on the said date has already improved his qualification by acquiring D.Ed. on 07-02-2005 and he remained in continuous employment for a

period of more than 13 years pursuant to the order of appointment and approval granted by the respondent.

13. The respondents have claimed that the petitioner's approval to the post of Assistant Teacher granted on 22-12-1994 until further orders was modified vide order dated 29-09-1995 subject to condition of acquiring appropriate (D.Ed. by postal course) qualification within 5 years of the said order is concerned, the policy which is placed on record by the respondent and the petitioner depicts that the respondents have a consistent policy since 1994 or even prior to the same to grant approval to the untrained teacher with an condition to acquire/improve their qualification while in service. Such support can be drawn from the Government Resolutions dated 05-02-1999, 11-11-1994, 16-03-1996 and 05-02-1999.

14. As a sequel of above, it cannot be said that the permanent approval granted to the petitioner was contrary to the existing policy of the Government.

15. The petitioner has produced on record the certificate whereby he has qualified the D.Ed. examination as on 07-02-2005. As such it has to be inferred that as on 07-02-2005 the petitioner was holding qualification of D.Ed. and cannot be said to be not qualified.

16. The petitioner has chosen to approach this Court through Writ Petition No.2224/2007 against the inaction of the

respondent Management in absorbing his services and this Court by making positive observations and negating the claim of the respondents noted that the approval in favour of the petitioner cannot be said to be only in the interest of the student as no such condition was incorporated in the order of approval.

17. In this background, it has to be held that since 1993 onwards i.e. from 01-07-1993 the date when the petitioner joined his services as an Assistant Teacher, the petitioner was in continuous service of the respondents and his services were duly approved as an Assistant Teacher. The conduct of the respondents particularly respondent nos. 2 and 3 in not absorbing his services in respondent no.5-School as an Assistant Teacher is illegal, as the petitioner was permanent employee and his services were duly approved.

18. As the petitioner himself is not claiming backwages and has restricted his claim to the extent of grant of retirement benefits it is held that the petitioner shall not be entitled for backwages or any other financial benefits till the date of his superannuation. However, his entire service from the date of his initial appointment and joining i.e. 01-07-1993 as reflected in Annexure-I, the approval order issued by the respondent nos. 2 and 3, be considered till the date of his superannuation for the purpose of calculating the retirement benefits. It is held that the petitioner shall be entitled to all the retirement benefits in

accordance with the law which the respondent nos. 2 and 3 shall release in any case within a period of 3 months from today.

19. In this view of the matter and having regard to the fact that the similarly placed non-teaching employees in Writ Petition No.5431/2010 were granted similar relief. We deem it appropriate to pass the following order in the matter.

(i) Writ Petition stands allowed.

(ii) The petitioner shall attend the office of the respondent no.2 on 29-01-2024 and shall extend all possible cooperation in the matter of processing his case for grant of pensionary benefits as per Rules.

20. Rule is made absolute in above terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J)