



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

WRIT PETITION NO. 7620 OF 2022

(New Lokhit Shikshan Sanstha and another..Vs.. 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 orders

Mr. A.Z. Jibhkate, Advocate for petitioners,
Mr. D.P. Thakare, Additional Government Pleader for respondents.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 04-07-2024

The petitioner No. 2 joined on the establishment of the Junior College run by the petitioner No. 1.

2. Vide impugned order dated 22.7.2022, the proposal submitted by the petitioner No. 1 for grant of approval to the transfer/appointment of the petitioner No. 2 came to be rejected by respondent No. 3, as a sequel of which, the petitioners have approached this Court.

3. Mr. Jibhkate, the learned Counsel appearing for the petitioners, would urge that the petitioner No. 2 was appointed by petitioner No. 1 on unaided post vide order dated 23.6.2012. According to him, after the post fell vacant, the petitioner No. 2's services were absorbed on the aided post and as such, proposal was forwarded.

4. Mr. Jibhkate would claim that the rejection of proposal for grant of approval is based on incorrect reasoning viz. non existence of the post. So as to substantiate his contentions, he would urge that during the relevant time when the order of absorption was passed, the respondent Education Department has continued number of approved posts as were existing in 2020. He would invite attention of

this Court to the Government communication dated 17.12.2020 in support of above claim. As such, he would claim that the sanctioned posts as were existing in 2019-2020 were continued in the academic year 2020-2021 for want of the verification of admissions/number of students.

5. In this background, Mr. Jibhkate, would claim that the approved staffing pattern as was existing in 2019-2020 was continued and should have prevailed before the respondent in the matter of grant of approval.

6. As against above, Mr. Thakare, learned Additional Government Pleader for the respondents, has opposed the prayer. According to him, for want of students, the classes against which the petitioner No. 2 was appointed, were closed down. As as a sequel, even if the services of the petitioner No. 2 were approved, it was for the petitioner No. 1 to take appropriate step in the matter of termination of the services or to take such other step as is permissible. He would claim that on the date of effecting transfer of the petitioner No. 2 by petitioner No. 1, there was no appointment order in existence in favour of the petitioner No. 2 and that being so, the respondents were justified in rejecting the proposal.

7. We have appreciated the submissions canvased by the parties.

8. The staffing pattern which was sent for the approval by the Principal of the Junior College which is managed by petitioner No. 1 does not reflect that the petitioner No. 2 was working in the said College as on 2020-2021. That being so, there was no occasion for the petitioner No. 1 to absorb or transfer the services of the petitioner No. 2 as an employee

working on an unaided post with the petitioner No. 1 Institution. The reasoning furnished by the respondent authority for rejecting the proposal appears to be justifiable as the petitioner No. 2 was not in employment at the relevant time.

9. Apart from the above, this Court is equally required to be sensitive to the list of the teachers submitted by the Principal of the College managed by the petitioner No. 1 Society wherein petitioner No. 2's candidature as an employee is not reflected. The aforesaid conduct of petitioner No. 1 depicts that petitioner No. 2 on the date of absorption, was not in the employment of the petitioner No. 1 Institution.

10. That being so, no fault can be noticed in the impugned order. The petition as such, stands dismissed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede