



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 698 Of 2022

Shri. Amol Pramod Patil
Age: 34 years, Occu.: Service,
R/o. Plot no. 4, R.L. Colony,
Pimprala, Tq. and Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary
Education Department,
Mantralaya, Mumbai-32.
2. Deputy Director,
Of Vocational Education and Training
Divisional Office, Nashik.
3. The District Vocational Education and Training
Officer, Jalgaon.
4. Yashwantrao Chavan Shikshan Prasarak
Mandal, Erandol, Tq. Erandol, Dist Jalgaon,
Through it's President
5. Dadasaheb Digambar Shankar Patil
Arts, Commerce and Science College
Erandol, Tq. Erandol, Dist. Jalgaon,
Through it's Manager/ President,

.. Respondents

Mr. V.S. Panpatte, Advocate for the petitioner.

Mr. P.S. Patil, Additional Government Pleader for respondent Nos. 1 to 3.

The respondent Nos. 4 and 5 are served.

CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.

RESERVED ON : 7th JANUARY, 2025

PRONOUNCED ON : 14th JANUARY, 2025

J U D G M E N T [Per Shailesh P. Brahme, J.] :-

1. Rule. Rule is made returnable forthwith. With the consent of the parties, heard both sides finally, at the admission stage.

2. This petition is directed against order dated 07.12.2021 passed by the respondent No.3/In-charge District Vocational Education and Training Officer, rejecting the proposal of the petitioner seeking approval to his appointment as a full-time instructor. While rejecting the proposal, two grounds are cited namely (i) no prior permission was solicited for appointing the petitioner and (ii) appointment is in violation of the rules.

3. The petitioner is an employee of respondent No.5/Dadasaheb Digambar Shankar Patil Arts, Commerce and Science College (for short 'College') of which Minimum Competency Vocational Course ('MCVC' for short) is a part. The vacancy was created due to the death of one Dilip Madhavrao More. The management submitted application on 07.04.2015 seeking prior permission for the recruitment. The management published advertisement in a newspaper dated 05.05.2015. In pursuance of the advertisement, the petitioner faced the recruitment process and appointed vide order dated 16.06.2015 as

full-time instructor for 'Auto Engineering Technician' trade. By the impugned communication the proposal was rejected.

4. Learned counsel Mr. V.S. Panpatte, for the petitioner submits that the appointment of the petitioner was by following due procedure of law as contemplated by Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act of 1977 (for short '**M.E.P.S. Act**') and under Rule 9 of Rule of 1981. The sanctioned post was available. A prior permission to advertise the post was tried to be solicited, but there was no response. Learned counsel would submit that only reason for turning down the proposal is not seeking prior permission, which is perverse in view of application dated 07.04.2015. He would submit that another ground for rejecting the proposal is absurd. The respondents are trying to supply the additional reasons for rejecting the proposal which were not incorporated in the impugned communication.

5. Learned Counsel for the petitioner further submits that there was no response to the application of the management seeking prior permission. No surplus candidate was ever sent for the accommodation in the respondent No.5/College. By way of rejoinder, it is submitted that Government Resolution dated 06.02.2012 was superseded. The appointment is against vacancy for OBC. It is further submitted that the advertisement was published in newspaper '**Dainik Bajirao**'. He tenders on record the documents including the newspaper, short points of judgments and citations.

6. Respondent Nos. 1 to 3 have filed affidavit-in-reply to oppose the claim of the petitioner. Learned Addl. G.P. Mr. P.S. Patil submits that application dated 07.04.2015 was duly replied on 10.04.2015. The management did not take steps to submit the proposal as per circular dated 30.04.2014. It is vehemently submitted that the appointment of the petitioner is in flagrant abuse of clause Nos. 1, 3, 5 and 8 of Government Resolution dated 06.02.2012. The plea of the petitioner that advertisement was published in '**Dainik Bajirao**' is afterthought. The proposal was submitted on 18.11.2021, after period of 6 years. It is submitted that appointment is a backdoor entry and it is fraud played by petitioner and the management. It is submitted that an in-depth inquiry is required to be conducted in respect of the documents created by the management and so called procedure undertaken for the appointment of the petitioner.

7. Having considered the rival submissions of the parties, it reveals that vacancy was created due to death of one of the employees of the respondent No.4/Management. Though application was submitted on 07.04.2015 seeking prior permission, the management did not respond to the letter dated 10.04.2015 addressed by respondent No.4. No proposal was submitted as per circular dated 30.04.2014. The advertisement dated 05.05.2015, originally annexed to the petition does not disclose the name of the newspaper. The pleading to that effect is also silent. Pertinently, after lapse of 6 years, the proposal was submitted seeking approval to the appointment of the petitioner on 18.11.2021.

8. During the course of hearing, learned counsel for the petitioner placed on record a photocopy of newspaper namely '**Dainik Bajirao**'. It is not made clear as to why the pleading is silent in respect of the name of the newspaper. There is no explanation, as to why the proposal seeking prior permission was not presented to the concerned department in terms of circular dated 30.04.2014. There is no explanation as to why the proposal was submitted on 18.11.2021 when petitioner was appointed on 16.06.2015, i.e. after about 6 years. These circumstances raise doubt regarding the procedure adopted by the management in appointing the petitioner.

9. The learned Addl. G.P. has relied on Government Resolution dated 06.02.2012. The learned counsel for the petitioner submitted that the said resolution is superseded subsequently. No material is placed on record to support the contention. When the petitioner was appointed in 2015, the Government Resolution dated 06.02.2012 was in force and the management was bound to follow the same. We do not find that there is compliance of clause Nos. 1, 3, 5 and 8 of the Government Resolution dated 06.02.2012.

10. We do not find that there is any perversity or patent illegality in rejecting the proposal seeking approval to the appointment of the petitioner. The respondent No.4 is justified in holding that appointment in question is without following due procedure of law and in violation of Government Resolution dated 06.02.2012 and Section 5 of the M.E.P.S. Act. Considering the documents placed on

record by the petitioner to support his claim, the possibility of back-dated appointment cannot be ruled out.

11. It is the contention of the petitioner that by way of affidavit-in-reply additional grounds are supplied which is against law laid down by the Supreme Court in the matter of **Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi & Ors.** reported in **AIR 1978 SC 851.** The impugned communication discloses two grounds namely (i) not soliciting prior permission and (ii) not following due procedure. For not following due procedure by way of affidavit, explanation has been tendered. It is not a case that for the first time additional grounds are supplied in the High Court by way of reply. The burden is upon the employee to demonstrate that the appointment is made by following the due procedure of law. The judgments of the Supreme Court would not assist the petitioner.

12. The reliance is placed by the petitioner on the judgment of the Division Bench in the matter of **Sou. Revati Kusha Wagh & Anr. Vs. State of Maharashtra** in Writ Petition No. 10580 of 2015 and the companion matters. In that case, approval was rejected on the ground that, unless surplus teacher was absorbed, appointment of newly recruited petitioners could not be approved. In the case in hand, there are multiple grounds for rejecting the proposal. Hence, this judgment would not help the petitioner. He also relies on the judgment in the matter of **Mallinath s/o Melgiri Kante Vs. State of Maharashtra** in Writ Petition No. 7878 of 2014 with connected matters. In that case,

permission was sought from the Education Officer to fill-up the post, but there was no response from Education Officer for 15 days. Then, the management proceeded to recruit the teacher. In the case in hand, the respondent authority responded the application vide letter dated 10.04.2015. Thereafter, management did not comply with the instruction. This judgment also is not helpful to the petitioner.

13. Petitioner refers to the judgment in the matter of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra and Ors.** in Writ Petition No. 8587 of 2016 and connected matters. In that group of petitions the Education Officer refused to grant approval, as there was ban imposed by Government Resolution dated 02.05.2012. It was held that ban would not be attracted (a) if the recruitment was prior to concerned resolution (b) appointments were for filling-up the vacancies of English, Mathematics and Science teachers and (c) appointments were to fill-up the backlog of reservation. In the case in hand approval has not been rejected due to Government Resolution dated 02.05.2012. Though the petitioner was appointed against OBC category, the statutory formalities cannot be dispensed with. The ratio of the judgment is not helpful to the petitioner.

14. Next judgment cited by the petitioner is in the matter of **Nitin Bhatusingh Thakur Vs. State of Maharashtra** in Writ Petition No. 5975 of 2017. In that case the proposal was rejected on number of grounds. The predominant one was that the newspaper in which the advertisement was published was weekly one instead of daily. Such is

not the issue in the case at hand. We are not inclined to apply the ratio to the present case.

15. Further reliance is placed on the judgment in the matter of **Dnyan Vikas Mandal Vs. Parashram s/o Laxman Lokhande and Others** in Writ Petition No. 398 of 1985. It was held that publication of the advertisement only in one newspaper would not invalidate the appointment order. In the case in hand, proposal for approval is turned down on various counts. Hence, the ratio cannot be made applicable.

16. Lastly, reliance is placed on the judgment in the matter of **Pandurang Narayan Kanekar Vs. State of Maharashtra and Others** in Writ Petition No. 219 of 2022. In that case, the approval was revoked as the appointment was not according to the reservation and the post in question was not sanctioned. In the case at hand, these are not the grounds of rejection of the proposal. The facts are distinguishable. Hence, the ratio is not helpful to the petitioner.

17. For the reasons assigned above, we do not find any merit in the petition. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

Komal Kamble/