



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6862 OF 2019

Jitendra S/o Madhukar Dhangar,
Age : 31 years, Occu : Service,
R/o At Post : Dhanora, Tq. Chopda,
District : Jalgaon

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.
- 2] The Commissioner,
Tribal Development Department,
Nashik Division, Nashik
- 3] The Project Officer,
Integrated Tribal Development
Project, Yawal, Tq. Yawal,
Dist. Jalgaon
- 4] The Headmaster,
Ashram School, Dhanora,
Tq. Chopda, Dist. Jalgaon

.. Respondents

...
Advocate for the petitioner : Mr. Ajay D. Pawar and Mr. Yogesh M. Patil
AGP for respondents no. 1 to 3 : Ms. D.S. Jape
Advocate for respondent no. 4 : Mr. Ujwal S. Patil
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 6 FEBRUARY 2025

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. Learned
AGP waives service for respondents no. 1 to 3 and Mr. Patil waives
service for respondent no. 4.

2. The petitioner was appointed as a Shikshan Sevak with effect from 29-09-2008 under the scheme for Shikshan Sevak of the state government in respondent no. 4 – school, being run and operated by the Tribal Development department of the state. Respondent no. 2 granted approval to his appointment by the order dated 10-07-2012 (**Exhibit - D**).

3. After completing the probation period of three years, a proposal was forwarded to respondent no. 2 for grant of permanent approval. By the impugned communication dated 26-06-2015, approval has been granted only with effect from 27-03-2015 treating him to have been appointed on 27-03-2012.

4. Learned advocate for the petitioner would submit that when admittedly, the petitioner was appointed as a Shikshan Sevak with effect from 29-09-2008. Having completed three years of service on probation successfully, permanent approval ought to have been granted from the initial appointment. Nothing was mentioned in the impugned order, as to why the approval was granted from a future date. It is only after the petitioner indulged in representation that he was informed by communication dated 14-09-2017 through the respondent no. 3 – Project Officer that though the petitioner was appointed on 29-09-2008, the post of primary teacher was not available in respondent no. 4 – school. The post became vacant on promotion to

one Smt. Vandana Swarupsingh Valvi on 27-03-2012 to the post of Headmistress and it is only thereafter that the petitioner could be said to have been legally appointed as against the vacant post, as a reason for granting approval from the future date.

5. Mr. Pawar would submit that though affidavit in reply has been filed, the order regarding grant of approval does not disclose any reason and for the first time on his representation to respondent no. 2 – Commissioner and in the affidavit in reply, attempt has been made to supplement the decision for granting approval from the future date, which is not permissible in the light of ***Mohindersingh Gill and another Vs. The Chief Election Commissioner, New Delhi and others; 1978 (1) SCC 405.***

6. Learned advocate would also advert our attention to the affidavit in rejoinder and the annexures thereto, to demonstrate that in fact, there was a vacancy for the petitioner, to be appointed. He would submit that even the stand of the respondent that Smt. Valvi was promoted to the post of Headmistress on 27-03-2012, is factually incorrect. She was promoted to the post with effect from 02-02-2009. He would point out that there were two posts vacant in the year 2007; one for S.C. category and the other for V.J.N.T. category. Roster was verified by the respondents on 18-06-2007. Accordingly, the advertisement was issued on 08-07-2008 and the petitioner being from

N.T. category and was possessing certificate of validity of his being from that category, he was appointed against the reserved post. Thus, learned advocate Mr. Pawar would submit that the stand of the respondents in the impugned communication as also in the affidavit in reply, is false.

7. Learned AGP would refer to the affidavit in reply to oppose the petition. She would reiterate that there was no vacancy when the petitioner was appointed. The vacancy occurred pursuant to the promotion granted to Smt. Valvi on 22-03-2012 and that is why the permanent approval has been granted to the petitioner only with effect from that date.

8. We have considered the rival submissions and perused the pleadings as well as the papers.

9. There is no dispute about the fact that the petitioner was appointed as Shikshan Sevak in respondent no. 4 – school on 29-09-2008 pursuant to an advertisement, on a probation for a period of three years. It is not that respondent no. 4 – school is a private management. It is a school being run by the department of Tribal Development of the state, directly under the control of respondent no. 3 - Project Officer and respondent no. 2 – Commissioner for the Tribal Development. In the wake of such state-of-affairs, it was expected of them to have explained as to how the recruitment process was

undertaken by publishing an advertisement in respect of several posts and the petitioner was given the appointment on probation as a Shikshan Sevak, if at all there was no vacancy.

10. The impugned communication dated 26-06-2015 referring to the date of appointment as 27-03-2012, has not been appropriately explained. The reason being assigned about vacancy having occurred on that day pursuant to the promotion granted to Smt. Valvi, seems to be clearly an afterthought aimed at supplementing the erroneous stand in granting approval only from a future date. By communication dated 10-07-2012, the petitioner was expressly stated to be appointed on 29-09-2008 as a Shikshan Sevak. After completion of three years of probation, he ought to have been granted permanent approval from the original date of the appointment as a Shikshan Sevak.

11. The stand of the petitioner in the affidavit in rejoinder demonstrating about the manner in which the vacancy was available in the category to which he belongs, substantiated by the copy of the roster, further belies the stand of the respondents.

12. As is the trite legal position, when the order / communication under challenge does not expressly assign any reason for granting approval from a future date, the stand of the respondents in the affidavit in reply and may be at some earlier point, would be in

the form of supplementing the decision which is expressly prohibited by ***Mohindersingh Gill*** (supra).

13. In the light of above, the writ petition is allowed.
14. Impugned communication is quashed and set aside.
15. Respondent no. 2 is directed to grant approval to the petitioner's appointment with effect from 29-09-2008. The order shall be passed as expeditiously as possible and in any case within four (4) weeks.
16. Rule is made absolute in the above terms.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/