



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 500 OF 2017

Yuvraj S/o. Ambadas Suryawanshi

Age: 32 years, Occu. Nil,

R/o. Bhuvikas Bank Colony

Umarga, Tal. Umarga, Dist. Osmanabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,

Through its Secretary,

Social Welfare Department,

Mantralaya, Mumbai.

2. The Divisional Social Welfare Officer,

Latur Division, Latur.

3. The District Social Welfare Officer,

Group-I, Osmanabad,

District Osmanabad.

4. The President,

Shri Sant Maruti Maharaj

Kanegaonkar Primary Ashram

School, Bhosga, Tal. Umarga,

District Osmanabad.

5. The Secretary,

Shri Sant Maruti Maharaj

Kanegaonkar Primary Ashram

School, Bhosga, Tal. Umarga,

District Osmanabad.

6. The Headmaster,

Shri Sant Maruti Maharaj
Kanegaonkar Primary Ashram
School, Bhosga, Tal. Umarga,
District Osmanabad.

...RESPONDENTS

Mr. S. S. Thombre, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent No.1 to 3.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 11th FEBRUARY 2025
PRONOUNCED ON : 7th APRIL 2025

PC :-

1. Heard Mr. Thombre, the learned Advocate for the Petitioner and Mr. Jadhavar, the learned AGP for Respondent-State.
2. The petitioner is aggrieved by Judgment and Order dated 30th October 2015, passed by the learned Appellate Authority i.e. the learned Divisional Deputy Director, Social Welfare Latur Division, Latur, in Appeal No.01 of 2009. The learned Appellate Authority by way of impugned judgment and order has rejected the appeal of the petitioner thereby confirming the termination order passed by the school-management running Shri. Sant Maruti Maharaj Kanegaonkar Primary Ashram School, Bhosga, Tal. Umarga, Dist. Osmanabad. The petitioner-

primary teacher has approached this Court challenging the said judgment and order.

3. The Respondent No.1 is the State. Respondent Nos.2 and 3, are the State Authorities. Respondent Nos.4 and 5, are the office bearers of school management. Respondent No.6 is the Headmaster of the said Ashram School.

4. The facts, in short, as per petitioner are that the petitioner possesses the qualification of H.S.C. D.Ed. and was eligible to be appointed as a Teacher. The petitioner belongs to Other Backward Classes (O.B.C.) category. The school management published an advertisement in newspaper on 5th October 2006 and invited applications for the post of Headmaster and Assistant Teachers. One post of Assistant Teacher was reserved for a person belonging to OBC category. The petitioner in response to an advertisement, applied for the post of Assistant Teacher. Pursuant to the recruitment process, the appointment order was issued in favour of the Petitioner on 23rd October 2006. The same was approved by an order dated 12th June 2007 by the

District Social Welfare Officer-Respondent No.3. The Headmaster, however, issued notice of termination on 9th June 2009. The petitioner, therefore, approached the Appellate Authority against the said termination order which rejected the appeal by an order dated 27th December 2011. The petitioner, thereafter, filed a writ petition in this Court bearing Writ Petition No.5227 of 2012. This Court vide order dated 6th July 2015 remanded the appeal back to the learned Divisional Social Welfare Officer, Latur Division, Latur, for fresh decision considering as to whether the appointment of the petitioner was against a permanent vacant post.

5. After remand, the appeal came to be decided. It is held that, there was no prior permission obtained from Respondent No.3 while issuing an advertisement and the said appointment was on temporary basis. By holding this, the authority rejected the appeal. The petitioner is, therefore, before this Court.

6. Mr. Thombre, the learned Advocate for the petitioner strenuously made submissions. He submits that the post was clearly vacant

permanent post. Advertisement was, therefore, issued. After the advertisement, the appointment was made by following due process of law and on clear vacant post reserved for a person belonging to OBC category. The termination order was issued by the Headmaster without any authority. The petitioner was continued in service for three years which clearly shows that the post was of permanent nature. In the earlier appeal, the learned Appellate Authority committed a mistake in not considering the aspect as to whether the appointment was against the permanent post and has rejected the appeal. This Court in Writ Petition had rightly considered this aspect and had remanded the matter back for a fresh decision. After remand, it was necessary for the Appellate Authority to consider this basic aspect. The authority has failed to do so. The impugned judgment is, therefore, illegal and deserves to be set aside.

7. The learned Advocate for the petitioner, relied upon the judgment passed by this Court in *Writ Petition No.10536 of 2017* in the case of ***Lal Bahadur Shastri Shikshan Prasarak Mandal and Anr. Vs. Aruna Bhairuba Nakure and Anr.*** decided on 15th June 2022.

8. Mr. Jadhavar, the learned AGP opposed the writ petition. He submits that, though, the advertisement was issued, the appointment order of the petitioner itself shows that he was appointed as a temporary teacher. The approval also shows that it was granted on year basis. It was necessary for the petitioner to prove that the appointment of the petitioner was on permanent basis. This aspect is rightly considered by the Appellate Authority. The appeal is, therefore, rightly rejected. He further submits that though the advertisement was issued in the newspaper, there was no prior permission obtained from the Respondent No.3 to fill up the vacant post.

9. The learned AGP submits that the management had not followed proper roster. The advertisement itself was issued without following procedure. The petitioner does not get any right become permanent. He supports the impugned judgment and order and prays for rejection of the writ petition.

10. In the case of *Lal Bahadur Shastri Shikshan Prasarak Mandal* (supra), this Court in the said judgment had considered that the teacher

in that case had worked in the school continuously for a period of more than five years and had thus, acquired due permanency. It was observed that in view of Section 2 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. This Court finds that the said judgment would not help the petitioner as stated above.

11. In the present case, the appointment was made under Ashram School Code. Rule 2.32 of the said Code provides that, the appointment to be made as per guidelines issued by the State Government from time to time. If the appointment are made without following such procedure, the same shall not be approved by the State Government. In the present case, there is nothing to indicate that proper procedure was followed. Though it is shown that the advertisement was issued, however, it is not shown that the said advertisement was issued by taking prior permission of the District Social Welfare Officer. Rule 2.37 of the said Code provides that, the provisions of Maharashtra Employees of Private School (Conditions of Service) Regulation Act, shall be applicable to the employees of the Ashram School. Annexure-16 prepared under Rule 2.37 provides that, the employee can be appointed as permanent or

temporary. The temporary employee can be appointed for a particular period or on probation. It further provides that, the 'temporary employee' means, "an employee who is appointed for a particular period on temporary vacant post". In the present case, the appointment of the petitioner is clearly shown as a temporary for a particular period. The appointment is not shown on probation. It is for this reason also the present petitioner cannot be said to be appointed as a permanent teacher. The services of temporary employee comes to an end on completion of his terms or contract.

12. In view of the submission, this Court has seen the advertisement. In the advertisement, there is nothing to indicate that the prior sanction was obtained. The appointment order dated 23rd October 2006 clearly mentioned that the appointment is of temporary nature. Further appointment dated 12th June 2007 also shows that the appointment was temporary. The approval dated 30th October 2007 by the Respondent No.3 also shows that the appointment was only for academic year 2007-08 on temporary basis. This Court, thus, finds that even further order dated 17th November 2008 passed by the Respondent No.3 shows that

the appointment was approved in the academic year 2008-09 on temporary basis.

13. Coming to the termination letter issued by the Headmaster, this Court finds that the Headmaster had only communicated to the petitioner that the appointment was temporary in nature for the year 2008-09 and further that it has already come to an end. This termination cannot be said to be by order of Headmaster. It is well settled that the service of temporary person need not be terminated by following any procedure as the very nature of the appointment was on temporary. Therefore, it is not order of termination but merely an intimation that the period of appointment had expired. There is no any provisions pointed out by the learned Advocate for the petitioner showing that, if the person was worked for three years with the school management, the appointment is to be deemed as permanent. It is also seen in the present case that, every year there was a fresh appointment order specific for one year. In such cases, it is difficult to accept that the appointment was of permanent nature. Coming to the order passed by this Court in earlier writ petition, this Court finds that the authority has rightly considered

this aspect.

14. Considering all above, this Court find that no case is made out to allow the writ petition. No interference is called for in the impugned order passed by the Appellate Authority. Writ petition deserves to be dismissed. Hence, the following order:-

ORDER

- (i) Writ petition stands dismissed.
- (ii) No order as to costs.
- (iii) Pending Civil Applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]