



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3722 OF 2020

Shivaji S/o Bhivaji Sasane,
Age : 36 Years, Occ. Service,
R/o. Mitra Nagar, Majalgaon,
Tal. Majalgaon, District Beed.

.. Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education and Sport Department,
Mantralaya, Mumbai.
2. The Director,
Maharashtra State Council for Education,
Research and Training, Pune-30.
3. The Deputy Director of Education,
Education Department, Aurangabad Division,
Aurangabad.
4. The Secretary, (Prashasan)
Shri Swami Vivekananda Education Society,
R/o 2130 'E' Ward Tarabai Park, Kolhapur,
5. The Principal,
Shri Swami Vivekananda Education Society,
R/o. D.Ed College Vidhya Nagar Beed,
Tal and Dist. Beed.

.. Respondents

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Advocate for the Petitioner : Mr. Amol R. Gaikwad
AGP for Respondent Nos. 1 to 5 : Ms. R. R. Tandale

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**CORAM : S. G. MEHARE AND
SANDIPKUMAR C. MORE , JJ.**

DATED : MARCH 18, 2025

JUDGMENT (PER S.G. MEHARE, J) :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. The petitioner's case is that on 11th June 2009, he was appointed as Assistant Teacher (ATD) in Adhypad Vidhayala, Beed, District Beed. He was a part time teacher, therefore, every year the appointment orders were issued afresh, except the approval for the year 2009-2010 had been granted by the Education Officer to his appointment. The proposal for the approval of his appointment for the year 2009-2010 was sent to the Education Officer. In response thereto, the Deputy Director of Education, Aurangabad, by letter dated 21.02.2011 put the query to the Management about the delay in sending the proposal of the petitioner. The Management has explained the same. However, his approval remained pending. Hence, he preferred Writ Petition No. 11178/2015 before this Court. By that Writ Petition, the Deputy Director of Education, Aurangabad was directed to take an appropriate decision. Thereafter, the Deputy Director of Education, Aurangabad took a decision on 30.10.2017 and granted approval to the appointment of the petitioner as a part time teacher for the year 2009-2010. Since the decision was pending, a Contempt Proceeding was also filed and in that Contempt Proceeding some statements were made and considering the submissions, the Contempt Proceeding was disposed off.

3. After granting the approval by the Dy. Director of Education, Aurangabad by letter dated 30.10.2017, as per the case of the contesting respondent, an opinion was sought from the Director of Education, Pune and thereafter the Director of Education passed the impugned order dated 15.10.2018 rejecting the approval to the petitioner's appointment for the year 2009-2010, on the ground that in staffing pattern for the year 2009-2010, the post of Art teacher was not approved and the post of Drawing Teacher was shown vacant. The staffing pattern for the year 2010-2011 reveals that the petitioner was appointed on 12.06.2010 on the part time post of Art teacher and post of Drawing teacher was shown vacant. In 2009-2010, the post for Art teacher was not vacant. Hence, no approval could be granted for the year 2009-2010.

4. The learned AGP has filed affidavit-in-reply of respondent No.3 and reiterated the reasons mentioned in the impugned order. In sum and substance, it is the contention of respondent No.3 that the appointment of the petitioner is after the Government Resolution dated 04.11.2009. Hence, he does not deserve the prescribed pay scale as per the 6th Central Pay Commission. In a Contempt Proceeding, an opportunity was granted to impugn the order before this Court. The impugned order is free from errors and illegality. Since the post of the petitioner for which he was claiming the approval was not approved, it cannot be granted approval for the same.

5. The learned counsel for the petitioner has vehemently argued that the impugned order has been passed deliberately after the Contempt Proceeding has been initiated. The impugned order does not have the reference of seeking opinion, after the approval was granted on 30.10.2017. He would submit that, his first appointment was as Assistant Teacher (ATD), therefore, he was posted on the post of Drawing teacher and that post was never vacant. It was a sanctioned post in the year 2009-2010. However, subsequently in the year 2010-2011, a new post of Art teacher was approved for part time, therefore, instead of giving appointment on the post of Drawing teacher, he was appointed as Art Teacher. He would point out that the post of Drawing teacher was sanctioned in the year 2009-2010, therefore, his appointment on that post was legal and valid. However, the learned Director of Education has confused two appointment orders which were independent. He would also refer to the proposal of the Management sent to the Deputy Director of Education and argued that the Management has specifically mentioned that a petitioner was appointed as Drawing teacher in the year 2009-2010. It seems the misconception of the facts and search ground to reject the proposal. The petitioner was rendering services as a Drawing teacher since 11.06.2009. Therefore, he deserves the benefit of 6th pay-Commission scale. He prayed to allow the Writ Petition.

6. Per contra, the learned AGP has vehemently argued that the

decision dated 30.10.2017 was taken by the in charge Deputy Director. Thereafter, an opinion has been sought from the Director, Maharashtra State Education, Research and Training Council, Pune about the proposal. On verifying the facts and material placed on record, the Deputy Director of Education has rightly passed the impugned order. In view of the observations in the Contempt Proceeding, the impugned order has been challenged before this Court. So it has no connection with the earlier order dated 30.10.2017. Since the post was not sanctioned, there was no question to grant the approval. That apart, the appointment of petitioner was after the Government Resolution dated 4.11.2009, hence he does not deserve the benefit of 6th pay commission.

7. Perused the papers with able assistance of learned respective counsels. The staffing pattern which has been placed on record for the year 2009-2010 clearly mentions that part time post of Drawing teacher was approved. The appointment order of petitioner, dated 11th June 2009 clearly establishes that he was appointed as Assistant Teacher (ATD). The petitioner did not dispute that since thereafter he was appointed as Art Teacher.

8. When the proposal for the approval of appointment for the year 2009-2010 was submitted before the Dy Director of Education, some deficiencies were pointed out. The said deficiencies were restricted to

explaining the delay. None other than the explanation, other objections were raised. Thereafter, the Deputy Director of Education in clear terms has granted the approval to the petitioner for the year 2009-2010. In the interregnum, the Contempt Proceeding was going on, and that time the impugned order was passed. Though the Contempt Court had granted an opportunity to the petitioner to impugn the order, it has a co-relation with the earlier order of approval. The record clearly establishes that on the date of first appointment of the petitioner for the year 2009-2010, the post on which he was appointed was vacant and he was specifically appointed on that vacant part time post. The silence of the Education Department speaks a lot, and that shows their object. Reading the facts in toto, there appears substance in the contention of the petitioner that the Deputy Director of Education was disappointed because he was to face Contempt Proceeding and it has been reflected in the impugned order. At the cost of repetition, we record the findings that the post for which the petitioner was appointed in the year 2009-2010 was vacant and he was correctly appointed on that post. Therefore, there was no negligence. Reading the impugned order, it appears that the Director of Education is confused about the appointment for the year 2010-2011 and 2009-2010. We do not find sufficient reason for the Education Officer to find out the grounds, which are mentioned in the impugned order, to reject the proposal. In

the result, we are of the opinion that petition deserves to be allowed.

Hence the following order.

ORDER

- (I) The Writ Petition is allowed.
- (II) The impugned order dated 15.10.2018 passed by the Director of Education stands quashed and set aside and the order of the Deputy Director of Education, Aurangabad dated 30.10.2017 is retained.
- (III) The authority concern is directed to act upon the order dated 30.10.2017 and implement it forthwith in any case within two months from today.
- (IV) No order as to costs.
Rule is absolute in above terms.

(SANDIPKUMAR C. MORE)
JUDGE

(S. G. MEHARE)
JUDGE

Y.S.K.