

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5632 OF 2022

Gopal Madhukar Pathade

VERSUS

The State Of Maharashtra Through Its Secretary And Others

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Advocate for the Petitioner : Mr. Panpatte V.S.

AGP for Respondent/State : Mr. A.S. Shinde

Advocate for Respondent Nos.4 & 5 : Mr. A.B. Tele

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**CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATED : MARCH 04, 2025

PER COURT :

1. Heard both sides finally at the admission stage.
2. The petitioner is challenging the order dated 02.11.2021 passed by respondent no.3/Deputy Director of Education, Aurangabad rejecting proposal to grant approval of his appointment from 04.02.2020. The petitioner is soliciting the direction to grant him approval and the consequential benefits.
3. Learned counsel for the petitioner submits that the petitioner was initially appointed on 20.07.2013 by following due procedure of law. The proposal seeking approval to his appointment was submitted on 11.09.2013. He was terminated from services on 10.04.2014. Being aggrieved, he had to prefer Appeal No.5 of 2014 before the School Tribunal, Aurangabad. He could secure stay to the operation of termination vide order dated 03.05.2014. Thereafter, the

petitioner solicited injunction restraining the management from filling up the post vide order dated 20.08.2019, from the School Tribunal.

4. Meantime, after the termination of the petitioner when the order of stay was in operation, respondent nos.4 and 5/management endeavoured to appoint Mr. Edke on 25.11.2014. Thereafter, a vacancy was created due to superannuation of Mr. B.T. Waghmare on 31.07.2019. In view of vacancy, the petitioner and the management entered into settlement by way of joint pursis before the Tribunal. The appeal was disposed of by the School Tribunal considering the joint pursis vide order dated 30.09.2019. The order of termination was set aside and the petitioner was permitted to be accommodated against the vacancy created due to superannuation of Mr. Waghmare. The petitioner was held to be entitled to the service benefits since 20.07.2013 to 23.11.2014. The headmaster was directed to sent his proposal. The petitioner was not entitled to back-wages from 24.11.2014 to 31.07.2019.

5. In pursuance of the settlement between the parties, the petitioner was reinstated on 04.02.2020. His proposal was forwarded to respondent no.3, which was rejected by the impugned order.

6. Learned counsel for the petitioner Mr. Panpatte submits that the petitioner was having requisite qualification to occupy the vacant post of Mr. B.T. Waghmare. He was holding the qualification of M.A. (Marathi), M.A. (History) and M.A. (Economics) besides

M.Ed. Hence, the observations in the impugned order are perverse. He would submit that the petitioner was already in service and his entry was in accordance with law. Therefore, the finding recorded by the Deputy Director of Education is arbitrary. He would submit that the impugned order is liable to be quashed and set aside and the petitioner is entitled to receive approval from 04.02.2020 with all consequential benefits.

7. Learned AGP would submit that after the superannuation of Mr. Waghmare, due procedure was not followed by the management. The Deputy Director of Education was not a party to the settlement or the pursis which was submitted before the Tribunal. He would further submit that the petitioner acted in collusion with the management. The settlement which was arrived at between the parties and on the basis of which the orders passed by the Tribunal are not in accordance with law and would not bind the Deputy Director of Education. In that view of the matter, the Deputy Director of Education is justified in rejecting the proposal.

8. Mr. A.B. Tele, Advocate appearing for respondent nos.4 and 5/management would submit that considering the vacancy due to superannuation of Mr. Waghmare, the petitioner was accommodated. The management or the petitioner did not impose any liability on the education department while entering into a settlement. He would submit that the petitioner deserves approval.

9. We have considered the rival submissions of the parties. The petitioner's first appointment was made on 20.07.2013 in pursuance of the advertisement issued on 01.06.2013. That time, petitioner was holding the qualification of M.A. (Marathi) with M.Ed. His proposal was also forwarded seeking approval on 11.09.2023. Before securing any order on the proposal, on 10.04.2014, he was terminated from services. After his termination, Appeal No.5 of 2014 was preferred by him before the Tribunal. Before Tribunal, stay was granted on 03.05.2014. Despite the order of stay, albeit it was passed after the execution of the order of termination, the management appointed Mr. Edke on 25.11.2014.

10. It is a matter of record. The appeal was not decided on its own merit. Petitioner, respondent no.3/Deputy Director of Education and Mr. Edke were parties before the School Tribunal. In the joint pursis of the settlement, Deputy Director of Education was not a party. Neither was it a consenting party for settlement of the matter. It appears that the management appointed Mr. Edke despite the orders of the Tribunal and pendency of appeal. To accommodate the petitioner and simultaneous to protect services of Mr. Edke, compromise was entered into. From the sequence of the events, it is apparent that the management is shielding the services of Mr. Edke. Mr. Edke should not have been appointed when the appeal of the

petitioner was subjudiced and there was order of stay. After five years, the petitioner and the management entered into compromise.

11. Learned AGP is right in his submission that when the vacancy arose on 31.07.2019 because of the superannuation of Mr. Waghmare, the procedure as contemplated under Section 5 read with 9 of MPES Act and Rules should have been followed. Without resorting to the due procedure of law, the petitioner was sought to be accommodated. The conduct of the Tribunal is objectionable. The management is acting in collusion with the petitioner.

12. The management cannot shield a particular employee that too when his entry in the service is doubtful. Compromise entered between petitioner and management would not bind the State or its officers. Petitioner and management have run risk to save management from clutches of law. Now management has to bear liability of the petitioner. This entire conduct of the management is to see that the petitioner is also accommodated and the management is absolved from awarding the service benefits. We find that this type of practice is depreciable.

13. However, what transpires from record is that the petitioner cannot be blamed entirely because his initial appointment is in accordance with law and before receiving any approval he was terminated from the service. We find that the impugned order cannot be interfered with. Under peculiar facts and circumstances, we cannot

exonerate respondent nos.4 and 5 from their responsibilities. The petitioner is in service from 04.02.2020. The petitioner is entitled to all service benefits including emoluments and further mandatory benefits at the cost of respondent nos.4 and 5/management. The respondent/management cannot secure any further approval or reimbursement of the service benefits of the petitioner. We, therefore, pass the following order :

ORDER

- (i) Writ Petition is allowed partly.
- (ii) Impugned order dated 02.11.2021 passed by the respondent no.3/Deputy Director of Education stands confirmed.
- (iii) Respondent nos.4 and 5 are directed to continue the petitioner in the services and they shall disburse all the service benefits including emoluments, increments as permissible in law and for that purpose, they are not entitled to any reimbursement from the education department or the government.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)