

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10501 OF 2022

Sunil Bapusaheb Chavan

...Petitioner

Versus

The Deputy Director of Education
(Secondary) & Ors.

...Respondents

Mr. Saurabh Pakale a/w Mr. Nilesh Desai i/by Mr. Shankar Katkar,
for the Petitioner.

Mr. V.G. Badgujar, AGP for the Respondents-State.

**CORAM : NITIN W. SAMBRE &
ASHWIN D. BHOBE, JJ.**

DATE : 22nd JANUARY, 2025

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1. On 3rd July, 2012, in the Respondent No.4-School managed by Respondent No.3-Education Society/Trust, the Petitioner was appointed as a Shikshan Sevak for a period of three years. Such approval, by the Respondent No.2-Education Officer was pursuant to proposal submitted by Respondent No. 4 in the month of July, 2017, the Petitioner having completed the probation on 3rd July, 2015.

2. The said approval which was granted to the appointment of the Petitioner incorporates a condition viz., that the Petitioner will be entitled for the salary from 28th July, 2017 (i.e. the date of approval for appointment) and not from the date of order of appointment viz., 3rd July, 2012, as such this Petition by the employee against the Respondents seeking directions to release the salary/benefits from the date of appointment, i.e., 3rd July, 2012.

3. The learned Counsel for the Petitioners would invite our attention to the appointment order, the fact about existence of vacancy with the Respondent No. 4 for the post of Shikshan Sevak and the Petitioner having worked with effect from 3rd July, 2012 on the said post. According to the learned Counsel for the Petitioner the post approval being granted by the Respondent-Education Officer, the salaries were directed to be released in lieu of Condition No. 5 incorporated in the approval order dated 28th July, 2017 while granting such approval with effect from the date of appointment, i.e., 3rd July, 2012. That the Petitioner in lieu of the undertakings of the indemnity bond shall not be claiming benefit from the date of appointment till the order of grant of approval, i.e., 28th July, 2017. According to learned Counsel for Petitioner the management got executed and indemnity bond perhaps on the instructions of the Education Officer to get rid of the financial liability by the management so also the Education Officer. Such document got executed by practising coercion and in such an eventuality in law if the Petitioner is entitled for benefit of the grant of salary/

honorarium from the date of appointment viz., 3rd July, 2012 the approval being granted even if on 28th July, 2017, however, the same is from the date of appointment. The Petitioner is entitled for the benefit of the grant of honorarium by the Education Officer.

4. He would claim that the Petitioner had no occasion or intention to voluntarily execute such indemnity bond or an undertaking to give up their claim for grant of honorarium or salary from the date of appointment.

5. As against above, though served, none appears for the Respondent-Management. Mr. V.G. Badgujar, the learned Assistant Government Pleader (AGP) would strenuously urge that the order of grant of approval is in tune with the regular practice adopted in the department. According to him, it was the management who has obtained the indemnity bond/undertaking from the Petitioner that they shall not be claiming the financial benefits from the date of appointment be the period from the date of appointment, i.e. 3rd July, 2012 till the date of grant of approval, i.e, 28th July, 2017. According to him, such documents are produced by the management along with the proposal for grant of approval submitted by the management and in such an eventuality, the Education Officer cannot be blamed for obtaining such an indemnity bond from the Petitioner. He would submit that once the Petitioner has voluntarily given up their claim for the monetary benefit to be obtained from 3rd July, 2012 till the date of grant of approval viz.,

28th July, 2017, the Petitioner cannot approach this Court seeking relief of release or benefit. According to learned AGP even otherwise, the aforesaid factual matrix discloses disputed question of facts as whether the aforesaid documents in the form of undertaking/indemnity bond was obtained by coercion cannot be decided in Writ Jurisdiction.

6. We have considered the submissions.

7. It is not in dispute that the Petitioner was appointed on 3rd July, 2012 by the Respondent-Management against the vacant and approved vacancies. Such vacancies were advertised pursuant to which the Petitioner was found to be qualified and claimed to be appointed from 3rd July, 2012 in the capacity of Shikshan Sevak for a period of three years. The Petitioner, thereafter, successfully completed the probation of Shikshan Sevak for the period of three years and accordingly, the proposal for approval was submitted by the Respondent-Management not only for a period for which the Petitioner worked as Shikshan Sevak, but also for the subsequent period.

8. Though the approval was granted the Petitioner is questioning the Condition no. 5 incorporated in the approval order whereby, the Petitioners are held to be not entitled for the financial benefits till the date of grant of approval, i.e., 28th July, 2017.

9. If we consider the condition incorporated by the Education Officer, we fail to understand as to what prompted the Education Officer to accept the indemnity bond/undertaking executed by the Petitioner that they shall not be claiming the financial benefit for a period for which they have worked as a Shikshan Sevak till the date of grant of approval.

10. The Petitioner, in our opinion, were forced by the management to execute such indemnity bond so as to get the proposal for a grant of approval period from the Respondent-Education Officer.

11. In this backdrop, it cannot be said that the Education Officer exceeded in his jurisdiction thereby, directing the Petitioner to execute the indemnity bond rather such conduct appears to be form the management to get the indemnity bond executed from the Petitioner, that they will not be calming the financial benefits for the period from date of appointment till the date of grant of approval. In our opinion, in fact, the Education Officer should have conducted an inquiry and ought not to have accepted the indemnity bond from the management against the interest of Petitioner thereby compromising their financial lawful interest. In that view of the matter, we deem it appropriate to quash and set aside the Condition No.5 of the approval order dated 28th July, 2017.

12. We direct the Respondent-Education Officer and management

to release the benefits to which the Petitioner is entitled for a period from his date of appointment till the date of grant of approval by ignoring the aforesaid conditions within period of three months from today. The Petition accordingly stands allowed.

[ASHWIN D. BHOBE, J.]

[NITIN W. SAMBRE, J.]