

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11063 OF 2014

Shri. Ajit Vilas Vankudre

.. Petitioner

Versus

The State of Maharashtra through
Secretary, School Education Department
and ors

.. Respondents

...

Adv.Archana Gaikwad for the petitioner.

Mr.K.S.Thorat, 'B' panel counsel a/w Ms. Nisha Mehra, AGP for
respondent nos.1 to 3.

CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.
DATED : 20th JANUARY, 2025

JUDGMENT (PER BHARTI DANGRE, J):-

1. The petitioner on having acquired qualification of MSc (Mathematics) and B.Ed. (Mathematics), was appointed as a part time teacher in Saraswati Secondary and Higher Secondary Vidyamandir, Ringane, Taluka Lanja, District Ratnagiri, and he rendered his service in the said capacity from 1/07/1997 to 28/12/2003.

At this juncture, it is necessary to note that the school in which he rendered his service on part time basis was recognized as an aided school and the appointment of the petitioner received approval from the Deputy Director of Education from time to time.

2. The petitioner rendered his service as part time teacher for a period of 6 years and 6 months, and in the wake of the scheme

formulated by the State Government for absorption of Shikshan Sevak as Assistant Teacher, on completion of period of 3 years as Shikshan Sevak, a person becomes eligible for appointment as Assistant Teacher and the very said policy contemplate that if a person has worked as a part time Shikshan Sevak, on completion of 6 years of service, he becomes eligible for appointment as Assistant Teacher.

3. The respondent no.4 is an Educational Institution registered under the Bombay Public Trusts Act and the Societies Registration Act, and respondent no.5. school is run by respondent no.4, which is recognized by the Government and is also in receipt of grant in aid.

Since in the said school a teaching post fell vacant, the respondent no.4, initiated selection procedure by issuing advertisement and inviting applications.

Since, the petitioner found himself to be qualified, he was selected as Shikshan Sevak and by order dated 29/12/2003, he was appointed on a honorarium of Rs. 4000/-.

Pursuant to his appointment, the respondent no.5 school submitted a proposal for the approval to the Education Officer (Secondary), Zilla Parishad, Ratnagiri, and on 30/12/2003, approval was granted to his appointment as Shikshan Sevak.

He completed period of 3 years on 28/12/2006, and became eligible for being appointed as Assistant Teacher, in the prescribed payscale.

The respondent no.5 issued an appointment order in favour of the petitioner on 28/12/2006, appointing him as Assistant Teacher in the payscale of Rs.5500-75-9000 and his appointment received approval from respondent no.3 on 21/03/2007.

The aforesaid orders are part of the petition.

4. The grievance raised by the petitioner, in the petition is that on completion of period of 6 years of service as part time teacher, he ought to have been approved as full time Assistant Teacher, and not as Shikshan Sevak and this benefit is claimed by him based upon the Government Resolution dated 10/06/2005, issued by the State of Maharashtra being annexed to the petition at Exhibit-E.

5. The petitioner made a representation to the respondent no.5, and requested that the proposal should be forwarded to respondent no.3 to grant approval to him as Assistant Teacher from his date of appointment in the respondent no.5 school and infact the Managing Committee of the respondent no.4 in its meeting dated 5/06/2010 passed a resolution resolving that, such a proposal be forwarded to the Deputy Director of Education. In terms of the resolution a proposal was forwarded on 28/06/2010, to the respondent no.3 to take action as per the Government Resolution dated 10/06/2005, by praying that the petitioner should be granted approval, as Assistant Teacher by taking into consideration the service rendered by him on part time basis and from 29/12/2003, the payscale of 5500-9000 shall be made applicable to him.

6. On 30/06/2010, the Education Officer (Zilla Parishad) informed the respondent no.5, Headmaster that, the petitioner had rendered his service as part time teacher in Saraswati Secondary and Higher Secondary Vidyamandir, Ringne from 1/07/1997 till 28/12/2003, and the service amounted to 6 years and 6 months, which received approval from the Deputy Director of Education. It was informed that the petitioner was appointed as a full time Shikshan Sevak in the respondent no.5 school from 29/12/2003, and the Education Officer has granted approval to the said appointment and from 31/03/2007, he was accorded the pay scale of Assistant Teacher.

Referring to the Government Resolution of 10/06/2005, considering that the petitioner had rendered, service as part time teacher for 6 years, he was held eligible for conferment of the pay scale of Assistant Teacher from 29/12/2003, in terms of the Government Resolution.

Upon the approval being conferred, the petitioner was also paid the amount of difference in salary of Assistant Teacher and the monthly honorarium, which was paid to him as Shikshan Sevak.

7. Upon all the benefits being conferred on the petitioner, the respondent no.3 by letter dated 13/06/2011 sought certain information and documents from respondent no.5 as some complaint was received and a compliance was ensured at the level of respondent no.5 vide letter dated 4/07/2011. Admittedly, the petitioner was not informed about such complaint nor did he ever receive any copy of the complaint and even, no explanation was called from him.

On 22/11/2013, the respondent no.3 passed an order informing the respondent no.5 that in the wake of the complaint received in respect of the pay scale granted to the petitioner and the report submitted by the Accounts Officer, Accounts and Audit Unit (Education), Ratnagiri, a report was submitted to respondent no.2, to grant approval to the petitioner as Assistant Teacher in place of Shikshan Sevak. However, by letter dated 14/10/2013, the respondent no.2 directed to take action by recovering of the amount from the petitioner, as the approval was wrongly conferred on him and it was also informed that the excess amount be recovered should be verified from the Accounts Officer and necessary steps should be taken.

The said communication dated 22/11/2013, is addressed by the Education Officer (Secondary), Zilla Parishad, to the Headmaster of respondent no.5 without any copy of the same being forwarded to the petitioner and this was based upon a communication from the Deputy Director of Education, Kolhapur Division, directing recovery to be made from the petitioner.

8. Startled by the aforesaid action, the petitioner preferred a representation to the Education Officer i.e. respondent no.3 requesting for an opportunity being afforded to him of being heard before the recovery is given effect to. The Headmaster of the respondent no.5 school also addressed a communication to the petitioner on 7/10/2014, indicating that the amount sought to be recovered should be deposited in the Government Treasury at the earliest or else his salary payable for the month shall be withheld.

9. Alleging that the impugned action on part of the respondent nos.2 and 3 resulting into issuance of communication by the respondent no.5 for recovery on the ground of excess salary being completely erroneous, illegal and in violation of principles of natural justice, as the whole decision was taken behind his back, he approached this Court by filing the present Writ Petition.

On 16/12/2014, this Court passed the following order:-

“ Heard.

2. Issue notice to the respondents, returnable on 03.02.2015.

3. Learned AGP waives service for respondents No.1 to 3-State. In the meantime, ad-interim relief in terms of prayer clause (d).”

In the wake of the aforesaid order, the recovery directed against the petitioner came to be stayed and the said ad-interim order continue to remain in force till date.

10. We have taken up the petition for final hearing by consent of the respective counsel, and we have taken note of the stand of the respondent nos.1 and 3 placed in an affidavit filed by the Deputy Education Officer (Secondary) Zilla Parishad, Ratnagiri, where a trivial objection is raised that the petition deserve a dismissal since the Accounts Officer, District Audit Squad (Education), Ratnagiri is not impleaded as a party respondent.

We find the objection to be frivolous and reject the same, as according to us the Accounts Officer is not a necessary party, though he may be a proper party.

11 On merits, the affidavit filed state as below thus:-

“c) With reference to Para-2 of the present Petition, I say and submit that, in the Para 2 of the Petition the Petitioner contains information in connection with the services rendered by the Petitioner in Saraswati Secondary and Higher Secondary Vidyamandir Ringane, Taluka- Lanja, District-Ratnagiri as part time Junior College/Higher Secondary Teacher for a period of 6 years 6 months. I say and submit that, as per the scheme of Shikshan Sevek framed by the State Government, a candidate appointed as Shikshan Sevek is required to work for 3 years and thereafter he becomes eligible to be appointed as Assistant Teacher in pay scale and the policy also provides that, if the candidate is appointed as part time Shikshan Sevek, then he has to work for 6 years in the capacity and thereafter he become eligible for appointment as Assistant Teacher in the pay scale. I say and submit that, in the present matter, the Petitioner rendered the 6 years services at Higher Secondary College and therefore, the present Petitioner is not entitled to take benefit of services so rendered in Higher Secondary/Junior College level for fresh appointment made as Secondary Teacher.

d) With reference to Para-3 & 4 of the present petition, I say and submit that, it is true that, the Petitioner has rightly been given appointment as Shikshan Sevek in the Respondent no.4 Secondary School for three years from 29.12.2003 to 28.12.2006 and thereafter as Assistant Teacher w.e.f. 29.12.2006. I say and submit that, it is true that, after complete 3 years services of the Petitioner as Shikshan sevek in Respondent no.5 School, the Petitioner become eligible to appointment as Assistant Teacher in prescribed pay scale and accordingly the Respondent no.5 issued appointment order on 28.12.2006 appointing the petitioner as Assistant Teacher. It is also true that, thereafter the proposal was submitted to the Respondent no.3 for approval and accordingly by order dated 21.3.2007 the Respondent no.3 granted the approval to the said appointment in the pay scale mentioned in the petition.”

12. We have heard Advocate Archana Gaikwad for the petitioner and Mr. K.S. Thorat ‘B’ panel counsel a/w Ms. Nisha Mehra, the learned A.G.P. for the respondents.

The stand of the respondents is peculiar, as it is urged before us that one Sakre, resident of Pachal preferred a complaint to the Director of Education, Secondary and Higher Secondary Education, Maharashtra State, Pune, on 22/12/2011, in respect of grant of approval to the petitioner as Assistant Teacher with effect

from 29/12/2003, instead of Shikshan Sevek and it is urged that the enquiry was conducted into the said complaint. It is also submitted that the Accounts Officer, District Squad (Education), Ratnagiri was requested to carry out the necessary verification and report as to whether recovery of excess salary is to be effected from the petitioner.

Accordingly, it is submitted that the Accounts Officer submitted his report by his letter dated 5/10/2012, making it clear that the benefit of part time service can be extended only, if the full time appointment is in the same cadre i.e. Higher Secondary/Junior College teacher to the Higher Secondary/Junior College teacher and since the petitioner had rendered 6 years services in Higher Secondary College is not entitled to take the benefit for his fresh appointment made in a Secondary School of respondent no.5, and therefore, the recovery of the excess payment to the petitioner was justified.

13. We must turn our attention to the basis on which the petitioner was conferred the benefit of which he was subsequently deprived of and we find the Government Resolution dated 10/06/2005, issued by the School Education and Sports Department at Exhibit E to the petition.

The aforesaid Government Resolution, is a corrigendum to the Government Resolution dated 13/10/2000, issued by the State Government for implementing the modified Shikshan Sevak Scheme as it was found that certain practical difficulties are arising in implementing the scheme and the guidelines are issued to redress such difficulties.

Clause No.9 of the said corrigendum issued on 10/06/2005, categorically stipulate that for part time teachers if the workload of full time teacher is available and if the candidate qualify in other terms and conditions of appointment, he should be appointed as Shikshan Sevak, however, while issuing such appointments and granting approval, it would be mandatory to follow the reservation policy for backward classes.

The clause further states that if a part time teacher has to be appointed as Shikshan Sevak, half of his service (**6 months for one year**) should be taken into consideration and if he is found to be eligible for appointment, he shall be placed in regular pay scale. It is further clarified that if a part time teacher has rendered 6 years service and if he is to be conferred with the benefit of full time teacher, he shall not be appointed as Shikshan Sevak, but shall be placed in the regular pay scale as per the existing terms and conditions.

14. We do not find any restriction imposed in the Government Resolution dated 10/06/2005, which is projected as an excuse in the affidavit filed by respondent nos.1 and 3, by submitting that the petitioner is not entitled to take benefit of the service of 6 years and 6 months being rendered in Higher Secondary and Junior College.

It is highly erroneous on part of the respondents to read this condition into the Government Resolution, as we have noted that the petitioner's appointment as a part time teacher was in Saraswati Secondary and Higher Secondary Vidyamandir, which was a government recognized and aided school, whereas the appointment of

the petitioner in the respondent no.5, after following the due procedure of selection was also in a government recognized and aided Secondary school.

The stand adopted by the respondent nos.1 and 3, in an attempt to recover the amount from the petitioner on the ground stated in the affidavit in reply, and in an attempt to deprive him from the benefits conferred on him that is his placement as Assistant Teacher in the regular pay scale with effect from 29/12/2003, is completely erroneous and an arbitrary decision and as we find that the appointment of the petitioner even as a part time teacher was in a Secondary and Higher Secondary School and his subsequent appointment as Shikshan Sevak was also in a recognized aided Secondary School and he is definitely entitled for the benefit of the clarification issued by the School Education and Sports Department in the corrigendum/resolution dated 10/06/2005, and in particular clause 9 thereof.

15. In the wake of the above, we deem it appropriate to quash and set aside the impugned communication dated 22/11/2013, issued by the respondent no.3, directing recovery of the alleged excess salary paid to him of the post of full time Assistant Teacher in the respondent no.5 School. By confirming the interim order granted in his favour on 16/12/2014, the Writ Petition is made absolute.

No order as to cost.

(ASHWIN D. BHOBE, J)

(BHARATI DANGRE, J)