



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7740 OF 2021

1. Sandeep Chudaman Shinde,
Age 35 years, Occ. Service
as Assistant Teacher
 2. Sandeep Bhatu Patil
Age 36 years, Occ. Service
as Assistant Teacher
Both R/o Burzad,
Tq. & District Dhule.
- ... **PETITIONERS**

V/s.

1. The State of Maharashtra
Through its Secretary,
Department of School Education,
Mantralaya, Mumbai – 400 032.
 2. The Deputy Director of Education,
Nashik Division, Nashik.
 3. The Education Officer (Secondary)
Zilla Parishad, Dhule.
 4. Janta Vikas Mandal,
Burzad, Tq. & Dist. Dhule,
Through its President.
 5. Late Bhausaheb K.R. Patil
Secondary School, Burzad,
Tq. & District Dhule,
Through its Head Master.
- ... **RESPONDENTS**

...
Advocate for Petitioners : Mr. Sachin S. Deshmukh
AGP for Respondent/State : Mr. P.K. Lakhotiya
Advocate for Respondent Nos.4 & 5 : Mr. P.R. Nangare
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRADE, JJ.
DATE : 8th December, 2023

ORAL JUDGMENT (Per: Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners have put-forth prayer clause-B, B1, B2 and B3 as under:

“B) By issuance of a writ of mandamus or any other appropriate writ, order or direction in the like nature, it be directed to the respondent No.2 and 3 in particular to disburse the salary of the petitioners forthwith.

B-1) By issuance of writ of certiorari or writ or order in like nature quash and set aside the impugned show cause notice (Exh.G) dtd.25/6/2021 issued by the respondent no.2; and for that purpose issue necessary directions.

B-2) By issuance of writ of certiorari or writ or order in like nature grant stay to the implementation, operation and execution of the impugned show cause notice (Exh.G) dtd.25/6/2021 issued by the respondent no.2 with further direction to allow the petitioner to continue their services and to release the salary, to which the petitioner are legitimately entitled and also no coercive action based upon the impugned communication be taken against the petitioners; and for that purpose issue necessary directions.

B-3) Quash and set aside the impugned communication/ order dtd.5/8/2021 issued by the respondent no.2 with further directions to restore the same and confer the consequential service benefits including the salary; and for that purpose issue necessary directions.”

3. This matter was heard at length on 06.12.2023, 07.12.2023 and today.

4. We have considered the last order dated 05.08.2021 that has been passed by the Deputy Director of Education, Nashik Division, Nashik which has been impugned in this petition through an amendment. Suffice it to say that the approval to the payment of salaries of the Petitioners have been refused on the following grounds:

“ तथपि, दि 06/07/2021 रोजी आयोजीत केलेल्या सुनावणीमध्ये खालील बाबी निदर्शनास आल्या.

1. श्री. संदीप भटू पाटील व श्री. संदीप चुडामण शिंदे या दोन शिक्षकांच्या नियुक्त्या शिक्षकाचे रिक्त पद होण्याअगोदरच केलेल्या असल्याचे या कार्यलयाच्या निदर्शनास आलेले आहे.

2. सदर दोन शिक्षकांचे नेमणूक मान्यता प्रस्ताव व शालार्थ आ.डी. साठी दाखल केलेले प्रस्तया संबंधित कार्यालयास तत्कालिन मुख्याध्यापकांनी विहित मुदतीत सादर केलेले नाहीत.

करिता, दि.06/07/2021 च्या सुनावणीमध्ये दिलेल्या निर्देशानुसार खालील प्रमाणे निर्णय देण्यात येत आहे.

निर्णय—

1. श्री. संदीप भटू पाटील व श्री. संदीप चुडामण शिंदे या दोन शिक्षकांच्या नियुक्त्या व मान्यतामध्ये उपरोक्त बाबींवरून अनियमितता झालेली असल्याचे दिसून आल्याने, शिक्षणाधिकारी /(माध्यमिक) जि.प.धुळे यांनी श्री. संदीप भटू पाटील व श्री. संदीप चुडामण शिंदे यांना शिक्षण सेवक म्हणून दिलेले मान्यता आदेश जा.क./धुजिप/शिक्षण/माध्य. /कनेमा/शिबीर/2011-2012 दि.07.03.2012 रद्द करण्यात येत आहेत.

2. उपरोक्त दोन शिक्षकांचे सदर आदेशाच्या दिनांकापासून शासकीय कोषागारातून वेतन देय राहणार नाही. सदर आदेशानंतर सदर शिक्षकांची सेवा

सुरु ठेवल्यास, सदर शिक्षकांची वेतन अदा करण्याची जबाबदारी संस्थेची राहिल.

3. सदर आदेशाप्रमाणे सर्व संबंधितांनी आवश्यक ती कार्यवाही करावी.”

5. There is no dispute that the Petitioners possess qualifications of M.Sc, B.Ed and B.A., B.Ed respectively. They were qualified to be appointed as ‘Shikshan Sevak’ for a period of three years. After their selection and appointment vide orders dated 09.02.2012, they were appointed as ‘Shikshan Sevak’. The Education Officer accorded permanent approval to the appointments of these Petitioners vide his order dated 27.03.2015 and they were granted the pay scale of Rs.9300-34800 in the grade pay of Rs.4300/-. Their names were included in the Shalarth ID and they were regularly receiving their salaries.

6. A complaint dated 06.11.2020 was filed by Bahujan Republican Association Party under the signature of one Mr. Anand Londhe, who claims to be the State Convener of the party. Vide the said complaint addressed to the Deputy Director of Education Nashik Division, it was alleged that the Petitioners have been illegally appointed. Based on such allegations, Respondent No.2 issued show cause notices dated 01.02.2021 to the Petitioners and directed that their salaries shall be with held from February – 2021. The Petitioners have, therefore, approached this Court.

7. By amending the petition, the Petitioners canvassed in paragraph nos.16-A and 16-B as under:

16-A. Petitioners submit that, it has been reliably learnt that the complainant has filed numerous complaint with the office of the Deputy Director, with regard to the issue of appointments and approvals of the various teachers. Thus it appears that, the complainant is habitual complainant and service jurisprudence doesn't recognize the concept of public interest and the said issue is no more res integra in the wake of the authoritative pronouncement of Hon'ble Apex Court in case of Duryodhan Shaush case (1998) 7 SCC 273, which is reiterated and followed in (2004) 3 SCC 363 as well as (2010) 9 SCC 655 Hari Banslal. Thus there was no occasion to try and entertain the complaint of the habitual complainant, who has neither participated in the recruitment process, wherein the petitioners have been selected and appointed by following due procedure of law. In any case the appointments of the petitioners are of the year 2012 respectively as such a substantial period has been lapsed, therefore, also the complaint ought not to have been entertained by the authorities and necessarily should have been rejected at threshold.

16-B. Apart from the aforesaid aspects the necessary scrutiny of the proposal with regard to the proposal of the petitioners have been made and on two successive occasion i.e. while granting approval as Shikshan Sevak initially on 7/3/2012, which has further culminated into a permanent approval on 27/3/2015 as such it was not open for the respondent authorities to make any assertion, when due scrutiny of the proposal has been made and based on the same the approvals have been accorded therefore, there is hardly anything to assert now after a long gap of 9 years and the complaint is filed with obvious reasons. Based on the same the petitioners are in receipt of the show cause notice dtd.25/6/2021 to offer the explanation. Accordingly the petitioners have offered their respective response on 6/7/2021, receipt of the same is duly acknowledged by the office of the Deputy Director. As such the petitioners submits that, there was no occasion much less propriety in entertaining the compliant of the complainant. The copy of the show cause notice dtd.25/6/2021 and response dtd.6/7/2021 are annexed herewith and marked as EXHIBIT-G."

8. By a further amendment, paragraph nos.16-C and 16-D were introduced in the pleadings, as the Petitioners had already completed their three years of Shikshan Sevak tenure, had been granted permanent approval, their names were included in the Shalarth ID and yet their salaries were continuously withheld. Reliance is placed on the judgment delivered in the case of **Dr. Duryodhan Sahu and Ors. V/s. Jitendra Kumar Mishra and Ors.**; AIR 1999 SUPREME COURT 114 and **Hari Bansh Lal V/s. Sahodar Prasad Mahto and Ors.**; AIR 2010 SUPREME COURT 3515.

9. In **Dr. Duryodhan Sahu** (supra), the Hon'ble Supreme Court (3 Judges Bench) has recorded in paragraph nos. 19 and 20 as under:

"19. Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia v. State of Orissa, 1996 (1) Orissa LR (CSR) 2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant :

" . . .A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved within the meaning of the Act. Tribunals are constituted under Article 323-A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled

by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning.

20. Learned counsel for the respondents relied upon the decision of this Court in S. P. Gupta v. Union of India, (1982) 2 SCR 365: (AIR 1982 SC 149) and read out several passages from the judgment dealing with the question of 'standing'. In that case the Court was not concerned with a Tribunal constituted under a Statute. It was discussing the question of 'standing' in a proceeding before the High Court or this Court. That ruling cannot help the respondents in the present case. Our attention is also drawn to a judgment in University of Mysore v. C. D. Govinda Rao, (1964) 4 SCR 575 (AIR 1965 SC 491) wherein the scope of a writ of quo warranto has been discussed. That decision will not apply in the present case as there was no application for issue of a writ of quo warranto before the Tribunal. Learned counsel for the respondents submits that the proceedings before the Tribunal is in the nature of quo warranto and it could be filed by any member of the public as he is an aggrieved person in the sense public interest is affected. We have already pointed out that the applications in the present case have been filed before the appointment of the petitioner as a Lecturer and the relevant prayers are to quash the creation of the post itself and preventing authorities from appointing the petitioner as Lecturer. Hence, the applications filed by the respondents cannot be considered to be quo warranto."

10. It is obvious that a total stranger has approached the education department alleging that the Petitioners have been illegally appointed. The education department has entertained the complaint, practically giving audience to a stranger who claims to be a social worker and heads a political

outfit, to unsettle an employee, more so a teacher on the basis of baseless allegations.

11. The learned advocate for the Management has strenuously supported the case of the Petitioners and submits that there was no illegality in appointing them.

12. The learned AGP submits that though a total stranger ought not to be entertained through complaints and more so when a person is posing as being a politician and a leader of a political party who cannot be permitted to target employees, the inquiry conducted by the education department has revealed that both these Petitioners have been appointed without following the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Both of them were appointed when the posts occupied by them were not vacant. He places reliance upon the affidavit in reply filed by Dr. Bhausahab Bhimkanrao Chavan, Deputy Director of Education, Nashik Region, more particularly the concluding portion in paragraph 6, wherein it is stated that the Petitioners were appointed by the Respondent-Management before the post of a Teacher become vacant and the proposals for getting approval and the Shalarth ID were not submitted by the Headmaster of the School to the concerned office within the prescribed time limit. In the light of these conclusions, Respondent No.2 cancelled the

approval of the Petitioners which had been accorded by the Education Officer vide his letter dated 07.03.2012.

13. Section 5 of the M.E.P.S. Act, 1977 reads as under:

“5. Certain obligations of Management of private Schools.

(1) The Management shall, as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

[Provided that unless such vacancy is to be filled in by promotion, the management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education,] whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.]]

(2) Every person appointed to fill a permanent vacancy [except [Assistant Teacher (Probationary)] shall be on probation for a period of two years. Subject to the provisions of sub-sections (4) and (5), he shall on completion of this probation period of two years, be deemed to have been confirmed. Provided that, every person appointed as "[Assistant Teacher (Probationary)] shall be on probation for a period of three years.]

[(2A) Subject to the provisions of sub-sections (3) and (4), [Assistant Teacher (Probationary)] shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.]

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice [[or salary [or honorarium] of one month in lieu of notice.]]

(4) If the services of any probationer are terminated under sub- section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section(1).]

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.”

14. In the above backdrop, we have adverted to the affidavit in reply filed by the Management dated 07.12.2023. The learned advocate for the Management brings to our notice that due to the complaint filed by the said stranger, Respondent No.2 cancelled the approval granted to the appointment of the Petitioners vide order dated 05.08.2021 and directed the Management that if the Petitioners are continued in employment, the liability of payment of salary would be shouldered by the Management. Due to the said order the Management terminated the Petitioners on 23.08.2021. Before their termination, they had approached this Court by preferring this Petition. Presently, their Appeal Nos.18 and 19 of 2021 are pending before the School Tribunal at Nashik.

15. We are astonished by the conduct of the education department. The only issue as regards the appointments of the Petitioners is that the vacancies were not available when they were appointed. The Petitioners have been granted approval and have put in almost a decade of service. Such cases have to be delicately handled by the Education Officer. No doubt irregularities committed by the Management have to be dealt with sternly. However, when an employee has been working for a long time, unless any illegality or fraud turns upon the conduct of such an employee and it is proved or is apparent that laches are attributable to his conduct or the appointment is patently illegal, issuing an order of cancellation of approval when they are not at fault, is an issue which needs to be thought over and pondered upon by the Education Department.

16. The advertisement on the basis of which the Petitioners applied for selection, was published in a relatively unknown newspaper namely 'Khandesh Khabar' dated 24.01.2012. The Petitioners were selected on 09.02.2012. The approval to their appointment as Shikshan Sevak was granted. Permanent approval as Assistant Teachers was granted on 27.03.2015 after completing the period of 3 years probation. With the introduction of the Shalarth Pranali (Shalarth ID), their names were registered and they started receiving online salary payments.

17. In the above backdrop, the Education Officer should have taken the Management to task for having indulged in irregularities in the process of selection and appointment of the Petitioners. It is undisputed that both the Petitioners are qualified and have the requisite qualifications for being selected and appointed as Shikshan Sevak and to be confirmed in employment as Assistant Teachers (Trained Graduate Teachers). If the Management was responsible for certain irregularities, the Petitioners could not be faulted. They read an advertisement, though published in a relatively unknown newspaper, and applied for the post alongwith other applicants who aspired to be teachers.

18. A G.R. dated 26.12.2019 has been issued by the Education Department of the State of Maharashtra directing all Education Authorities and other Authorities, not to entertain such complaints from strangers and unconnected persons. We, therefore, conclude that the Education Department should refrain from entertaining complaints from strangers. It has to be extremely alert and diligent, more so, to avoid the department being used for torturing employees or jeopardizing the career of teachers / employees.

19. In so far as the dates on which the two posts fell vacant, the learned AGP points out that said posts fell vacant on 31.05.2012. As such, it is obvious that the Management issued orders of appointment on 09.02.2012.

The Petitioners could not have been taken into employment in the absence of a vacancy. The learned advocate for the Petitioners fairly submits on instructions that the Petitioners would agree to their appointments being made effective from 31.05.2012 and they would not claim any service benefit at any stage in their service career or post retirement with regard to the period from 09.02.2012 till 31.05.2012.

20. In the above backdrop, during the course of the hearing in this matter, since we noticed the conduct of the Management, we expressed a view that this is a fit case to penalize the private Management for indulging in irregularities, by imposing costs of Rupees Five Lakhs per appointment. The learned advocate for the Management strenuously urged us to reduce the quantum of costs and he has tendered an affidavit of Shri Nitin Shankar Patil, President of the Respondent No.4-Education Society (2 pages) dated 08.12.2023, stating therein that the Management would pay costs of Rupees Two Lakhs per Petitioner. The said affidavit is taken on record and marked as 'X-1' for identification. In the light of the above and to balance the equities, especially in the absence of laches or oblique motives being attributed to the Petitioners, we would penalise the management.

21. **This petition is partly allowed** with the following directions :-

a) The impugned order dated 05.08.2021 stands quashed and set aside.

- b) The Petitioners shall be deemed to be inducted in employment from 31.05.2012 and their services shall be deemed to be regularized from the said date for all purposes including post retirement / retiral benefits.
- c) The Education Officer is directed to be extremely careful and cautious while dealing with any complaints against employees who have been confirmed in employment in the light of the law laid down by the Hon'ble Supreme Court in **Dr. Duryodhan Sahu** and **Hari Bansh Lal** (supra) and in the light of the G.R. dated 26.12.2019 issued by the Education Department of the State of Maharashtra.
- d) The Management shall deposit a total amount of Rupees Four Lakhs in this Court vide a demand draft, on or before 10.01.2024. It is directed that the Management shall not recover this amount from the Petitioners, either directly or indirectly.
- e) After the said amount is deposited in this Court, Registry to transfer the same to the following beneficiaries, as under:
- i) Rs. One lakh to Infant India, Anandwan, 659/Infant Hill, Infront of Bindusara Dam, N.H. 211, Pali, Beed-431122.
- ii) Rs. One lakh to Bhavani Vidhyarthi Kalyan Pratishthan, Arvi, State Bank of India, Shirur (Kasar) Branch. IFSC Code: SBIN0005995, A/c No. 33446000963.
- iii) Rs. One lakh to the Government Cancer Hospital at Aurangabad.

- iv) Rs. Fifty thousand to the Advocate's Association of the Bombay High Court, Bench at Aurangabad.
- v) Rs. Fifty thousand to the Bar Library of the Advocates' Association of Bombay High Court, Bench at Aurangabad.
- f) In view of the above, the Management agrees to withdraw the orders of termination and agrees to reinstate the Petitioners in service w.e.f. 15.12.2023. Consequentially, the Petitioners shall be deemed to be in continuous employment.
- g) The Petitioners present in the Court, have instructed the learned advocate for the Petitioners to state they would not claim the back wages for the duration of unemployment owing to their termination. The said statement is recorded. Therefore, the amount of salaries, which were stopped for some period prior to 23.08.2021, would be calculated by the Education Department by following the due procedure and the said amounts would be released within a period of 45 days from today.
- h) The Petitioners are at liberty to approach the School Tribunal and by placing this order on record, the said Appeals may be disposed off.
- i) **Rule is made absolute in the above terms.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]