
(2016) 07 BOM CK 0132
In the Bombay High Court
Case No : Writ Petition No. 34 of 2015

Digambar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 BCR 740

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. M.V. Ghatge, Advocate, for the Petitioners; Mr. V.H. Dighe, AGP, for the Respondent Nos. 1 to 3

Final Decision : Dismissed

Judgement

S.S. Shinde, J. - This Petition takes exception to the order dated 27th April, 2012, passed by Education Officer [Secondary], Zilla Paishad, Nanded, and also seeks direction to respondent no.2 to grant approval to the appointment of petitioner nos. 1 and 2 and release the benefits of grant-in-aid in their favour from 1st December, 2003, with all the consequential benefits.

2. The learned counsel appearing for the petitioners submits that though petitioner no.1 is appointed after following due process of law by the School Committee on clear vacant and sanctioned post, respondent no. 2 has wrongly observed that the appointment of petitioner no. 1 was without prior permission and he was not appointed by the properly constituted School Committee. He submits that the impugned order is passed totally on unsustainable reasons, ignoring the fact that the petitioner is appointed on the sanctioned post. He submits that there is no provision which mandates to seek prior permission of the Education Officer before appointment to the post of Peon is made when there is sanctioned post. The learned counsel also invites our attention to the contents of the additional affidavit so as to contend that four posts of peons are sanctioned and only four persons are appointed, two for the Secondary Section

and two for Primary Section. He also invites our attention to the contents of the rejoinder-affidavit and submits that the respondents may be directed to give approval to the appointment and services rendered by petitioner no. 1, on grant-in-aid basis.

3. So far as petitioner no. 2 is concerned, the learned counsel for the petitioners submits that, though the Education Officer has observed in the impugned order that the approval is granted to his services at the relevant time by the Education Officer, but wrongly observed that the post on which he is appointed has not been included in the basic post sanctioned.

Therefore, he submits that the directions may be issued to the respondents to grant approval to the services of the petitioners treating the said posts to be admissible for the grant-in-aid.

4. The learned AGP appearing for the respondent - State relying upon the averments in the affidavit-in-reply submits that the reasons assigned in the impugned order are keeping in view the relevant Government policy and also the procedure for appointment as contemplated under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules framed thereunder. Therefore, he submits that the Petition may not be entertained.

5. We have given careful consideration to the submissions of the learned counsel appearing for the petitioners and the learned AGP appearing for the respondent - State.

With their able assistance, perused the pleadings in the Petition, grounds taken therein, annexures thereto, additional affidavit, rejoinder-affidavit filed by the petitioners, and also affidavit-in-reply filed by respondent no. 2. Admittedly, the appointment of petitioner no. 1 i.e. Digambar Kamaji Kolhe is after issuance of the Government Resolution dated 26th March, 2002, by the School Education Department, Government of Maharashtra and therefore adherence to the provisions of the said Government Resolution would be necessary.

6. The contention of the learned counsel for the petitioners that it was not necessary to seek prior permission of the Education Officer before appointing petitioner no. 1 to the post of Peon, deserves no consideration. If the respondent - State has to release grant-in-aid, in that case the management is bound to inform the Education Officer about available vacancies and posts and its intention to advertise the said posts, so that the Education Officer can find out, whether such post/posts is/are sanctioned or otherwise and if admissible for grant-in-aid, and also there are surplus employees, if any, on his role so as to give direction to the management to absorb such surplus employees from other educational institutions. If the post/posts are/is vacant and sanctioned, it is necessary to follow the procedure, including advertising the said post/posts and then invite applications from the qualified desirous candidates, and after following such procedure, the School Committee should appoint the meritorious candidates

selected through proper selection process. Therefore, the contentions of the counsel for the petitioners that it is not necessary to seek permission/inform the Education Officer before petitioner no. 1 was appointed on the post of Peon, cannot be accepted.

7. In the light of discussion in the foregoing paragraphs, we do not find any reason to interfere in the impugned order in relation to petitioner no. 1. If petitioner nos. 3 and 4 have appointed the petitioner without following the procedure and without advertising the post, the management has to pay the salary and all other benefits available for the post of Peon to petitioner no. 1. The Education Officer is right in observing that petitioner nos. 3 and 4 are responsible for the payment of salary to petitioner no. 1.

8. So far as petitioner no. 2 is concerned, the policy prevailing then mandates that if the post is sanctioned clear and vacant and if it was available prior to issuance of the afore-mentioned Government Resolution dated 26th March, 2002, the said post has to be counted in basic post.

Therefore, the Education Officer has already directed petitioner nos. 3 and 4 to submit proposal to the concerned Officer to that effect in respect of petitioner no. 2. It appears that since petitioner no. 2 was appointed on 2nd January, 1999 and approval was granted to his services by the Education Officer at the relevant time, and he is approved teacher as on 31.12.2000, in case the proposal is already submitted by respondent nos. 3 and 4 and if not already submitted, then if it is submitted within four weeks from today, respondent no. 2 is directed to consider the same on the basis of policy prevailing at the time of appointment of petitioner no.2 and keeping in view the fact that approval to his services is granted long back. In case it is not necessary to send the proposal as per the policy prevailing then to the State Government, and if respondent no. 2 is competent to grant approval, respondent no. 2 shall take decision at his level in the light of the policy prevailing at the time of appointment within 8 weeks from today.

9. In the light of the discussion in the foregoing paragraphs, the Petition is partly allowed to the extent of petitioner no. 2. So far petitioner no.1 is concerned, the Petition stands rejected. No costs.