
(2020) 12 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 2503 Of 2020

Dilip Mohan Desai

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

Citation : (2020) 12 BOM CK 0050

Hon'ble Judges : R. D. Dhanuka, J; Madhav J. Jamdar, J

Bench : Division Bench

Advocate : Chetan G. Patil, Karan S. Thorat

Judgement

Â Madhav J. Jamdar, J

1. Mr. Chetan Patil, learned Advocate for the Petitioner seeks leave to delete Respondent Nos. 4 and 5. Leave as prayed is granted. Amendment to

be carried out forthwith.

2. Heard Mr. Chetan Patil learned counsel for the Petitioner and Sonali Mr. Thorat, learned AGP for the Respondent Nos. 1 to 3.

3. Rule. Rule made returnable forthwith. By consent of the parties, petition is heard finally. The learned AGP waives service on behalf of the

Respondent Nos. 1 to 3.

4. The Petitioner by the present Writ Petition impugns the order dated 8th November, 2019 passed by the Respondent No.2-Deputy Director of

Education, Kolhapur Region, Kolhapur. By the said order, Respondent No. 2 rejected the proposal for inclusion of name of the Petitioner in the

Shalarth Pranali.

5. It is the case of the Petitioner that the Petitioner was appointed as â??Peonâ? by Ajara Mahal Shikshan Mandal Ajara, Tal. Ajara, Dist. Kolhapur

(hereinafter referred to as "the Management") in Vyankatrao High School and Junior College, Tal. Ajara, Dist. Kolhapur (hereinafter referred to

as "the school") in clear vacancy on 5th April, 2007. Immediately thereafter a proposal was sent by the Management of the school to the

Respondent No.3 seeking approval to his appointment. As the said proposal was pending for long time, the Management again submitted further

proposal on 27th February, 2016. It is the Petitioner's case that the Respondent No. 3 i.e. Education Officer (Secondary), Zilla Parishad, Kolhapur

returned the said proposal on 19th December, 2016 on the ground that no instructions were received from the Government in respect of appointment

of non-teaching staff. The Petitioner therefore filed Writ Petition No. 3428 of 2018.

6. By an order dated 25th July, 2018 passed by this Court, Respondent No.3- Education Officer (Secondary) was directed to take decision as regards

the grant of approval to the appointment of the Petitioner in accordance with law. The said proposal was approved by the Respondent No. 3 by

order/communication dated 21st January, 2019 for the period from 5th April, 2007 to 4th April, 2010 and thereafter by further order dated 25th

February, 2019 from 5th April, 2010 on permanent basis.

7. It appears that thereafter the proposal for inclusion of Petitioner's name in the Shalarth Pranali was submitted. The said proposal was rejected

by the impugned order dated 8th November, 2019 by the Respondent No. 2- Deputy Director of Education, Kolhapur Region, Kolhapur on the ground

that by Government resolution dated 10th June, 2010 and 2nd May, 2012, there was ban on the appointment of non-teaching staff and that by

Government resolutions dated 12th February, 2015 with effect from 23th October, 2013 the status quo was directed as regards appointment for

new/vacant posts. The approval granted was not in accordance with the rules and therefore, the said request for inclusion of Petitioner's name in

the Shalarth Pranali was rejected.

8. Mr. Chetan Patil, learned counsel appearing for the Petitioner submitted that the Petitioner was appointed in the post of Peon on 5th April, 2007 and

the Government Resolutions on the basis of which the impugned order was passed are of subsequent dates i.e. 10th June, 2010, 2nd May, 2012 and

12th February, 2015. He relied on the judgment of this Court reported in 2011

(1) Mh.L.J. in the matter between Suman Shriram Kakad Vs. State of Maharashtra & Anr.

9. Mr. Thorat, learned AGP appearing for the Respondent Nos. 1 to 3 relied on the averments made in the affidavit-in-reply dated 14th December,

2020 of Satyavan Dharma Sonwane, Deputy Director of Education, Kolhapur Region, Kolhapur. In the said affidavit the factual position that the

Petitioner was appointed on 5th April, 2007 and the proposal for the approval for the said appointment was submitted on 5th April, 2007 is admitted. It

is further submitted that the said proposal was thereafter resubmitted in 2016 i.e. after lapse of 9 years.

10. It is submitted by Mr. Thorat that, the State Government had introduced the new staffing pattern on 23rd October, 2013 on the basis of RTE Act.

Vide Government Resolution dated 12th February, 2015, Government had granted stay on THE recruitment of non-teaching posts in the private grant

in aided schools on existing staffing pattern till further orders. He pointed out that by Government Resolution dated 28th January, 2019, the revised

staffing pattern has been approved by the Government finalizing the policy for approval of non-teaching staff in private aided and partially aided

secondary and higher secondary schools. He submitted that vide G.R. dated 28th January, 2019, the Government has decided the policy in connection

with staffing pattern of non-teaching staff excluding the post of peon. It is further provided in the said G.R. that as far as staffing pattern of fourth

class, posts of peons separate G.R. would be issued. He submitted that the Government has still not decided about the staffing pattern of class-IV

employees. He submitted that while considering the proposal for including the name of the Petitioner in Shalarth Pranali i.e. Shalarth ID, it was noted

that by considering old norms approval was granted inappropriately. It is submitted that the Respondent No. 3-Education Officer in contravention of

the rules and regulations granted approval to the appointment of the Petitioner and therefore, the proposal for inclusion of the Petitioner's name in

the Shalarth Pranali i.e. Shalarth ID was rightly rejected.

11. The factual position on record clearly shows that the Petitioner was appointed as Peon in the said school on 5th April, 2007 and immediately a

proposal for approval for the said post was submitted. However, for about 9 years, the said proposal was kept pending and therefore, further proposal

was sent on 27th February, 2016. The said further proposal however, was returned back on 19th December, 2016 on the ground that no instructions had been received from the Government.

12. This Court by order dated 25th July, 2018 passed in Writ Petition 3428 of 2018 directed the Respondent No. 3 to decide the said proposal. The

Respondent No. 3 granted approval to the appointment of the Petitioner for the period of three years from 5th April, 2007 to 4th April, 2010 by

approval dated 21st January, 2019. Subsequently approval on permanent basis was granted on 25th February, 2019.

13. It is admitted position that when the impugned order was passed, the said approvals were in operation and continue to be in in operation till date.

Although it is the contention of Mr. Thorat that said approvals are not in accordance with rules and regulations, he failed to point out any rule or

regulation alleged to have been violated while appointing the Petitioner. In our view, reliance on Government Resolutions dated 10th June, 2010, 2nd

May, 2012 and 12th February, 2015 in the impugned order is misplaced. In view of the fact that the Petitioner's appointment was dated 5th April,

2007, the said Government Resolutions issued subsequently were not applicable with retrospective effect.

14. A bare perusal of the Government Resolution dated 10th June, 2010 clearly indicates that with effect from 5th June, 2010 there was prohibition in

appointing non-teaching staff. It is thus clear that said Government Resolution applied from 5th June, 2010 as specifically mentioned in the G.R. dated

10th June, 2010 and was not applicable to Petitioner's appointment dated 5th April, 2007. Appointment made prior to the date of such Government

Resolution could not be invalidated.

15. Mr. Thorat has also relied on G.R. dated 23rd October, 2013 regarding staffing pattern. However, clause 4 of the said G.R. specifically mentions

that the guidelines which were existing with respect to non-teaching staff as per G.R. dated 25th November, 2005 will not apply after 23rd October,

2013. Mr. Thorat has also relied on G. R. dated 12th February, 2015. The said G.R. very clearly stipulates that status quo to be maintained with

respect to appointment and new posts and vacant posts should not be filled in any circumstances. It is thus clear that status quo was directed to be

maintained from 12th February, 2015 directing that no new posts or vacant posts

should be filled in. By no stretch of imagination it could be said that the post of the peon occupied by the Petitioner since 5th April, 2007 was either vacant or new post as contemplated under G.R. dated 12th February, 2015.

16. Mr. Thorat has also relied on G.R. dated 28th January, 2019. In fact, the said G.R. states that all the decisions of the State of Maharashtra regarding staffing pattern taken earlier are cancelled and the staffing pattern is to be implemented as set out in the said G.R. In so far as staffing pattern of class-IV employees are concerned, it is specifically mentioned that new separate G.R. will be issued. In the affidavit in reply it is specifically stated that Government has not decided the staffing pattern, recruitment pattern about the post of peon. Be that as it may, all these Government Resolutions which are subsequent to the appointment of Petitioner will not apply to the Petitioner's case and therefore, it can not be said that approval granted to his appointment as peon by orders dated 21st January, 2019 and 25th February, 2019 issued by Respondent No.2-Education Officer (Secondary) are illegal.

17. Mr. Patil rightly relied on the judgment of this Court in the matter of Suman Shriram Kakad (supra). In the said case also the question was whether the Government Resolution dated 5th August, 2010 would apply with retrospective effect. This Court has held that it is a cardinal principle of construction of statute that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. It is further held that unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective. As a logical corollary of general rule, retrospective operation is not taken to be intended unless that intention was manifested by express words or necessary implication. Another principle flowing from presumption against retrospectivity is that one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed.

18. In the present case, not only that the Government Resolutions on which Mr. Thorat has heavily relied are subsequent to the appointment of Petitioner but, in fact, the said Government Resolutions clearly contemplates/specifies that either they are applicable from the date of Government

Resolution or the date specifically mentioned therein.

19. Although it is one of the contention of the Respondents that approval granted by the Respondent No. 3 to the Petitioner's appointment is

contrary to rules and regulations, no such rules and regulations are pointed out. The said orders of approval are operating till date. The Respondent

No. 2 -Deputy Director of Education, Kolhapur Region, Kolhapur has committed illegality and irregularity in passing the impugned order dated 8th

November, 2019.

20. In view of above discussion, we set aside the impugned order dated 8th November, 2019 passed by the Respondent No. 2 and further direct the

Respondent No. 2 to forthwith include the name of the Petitioner in the 'Shalarth Pranali' and release the grant in aid for payment of salary with

all consequential benefits since the date of his appointment.

21. Rule is made absolute in the above terms. No order as to costs.