

(2024) 04 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 11085 Of 2017

Khushal And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 04 BOM CK 0021

Hon'ble Judges : Ravindra V. Ghuge, J;Y. G. Khobragade, J

Bench : Division Bench

Advocate : Nayana Patil, S.P. Mahajan, S.B. Narwade, S.P. Rathod

Final Decision : Partly Allowed

Judgement

Y. G. Khobragade, J

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

2. By the present petition under Article 226 of the Constitution of India the Petitioners have put-forth prayer clause-B as under:

"B) Be pleaded to quash & set aside the letter dtd. 31.8.2017 issued by respondent no. 3 and letter dtd. 5.9.2017 issued by respondent no. 4 may kindly be quash and set aside and further the respondent no. 3 may kindly be directed to consider the claim of the petitioners a fresh as earlier as possible within period of 3 weeks from today."

3. The learned advocate appearing for the Petitioners submits that the Petitioner No. 1 is HSC passed and the Petitioner No.2 is SSC passed. On 04.09.2015 Respondent Nos. 4 and 5 published an advertisement in Daily Newspaper "Dainik Lokmat" for the post of Shipai Sevak and in pursuance of said advertisement the Petitioners applied for the said post and have undergone the selection process. Accordingly, the Petitioner No.1 appointed to the post of Shipai Sevak under the

reserved category with the Respondent No. 4 and the Petitioner No. 2 was appointed for the post of Shipai Sevak under the open category. Thereafter, both the Petitioners joined on 21.09.2015 and while joining both of them have furnished an undertaking that they will abide by the terms and conditions described in appointment letter. On 14.09.2015 the Managing Committee of the Education Society passed the resolution for submitting the proposal for approval to the Education Officer – Respondent No.3 and on 28.12.2015, in pursuance of the said resolution the proposal for approval of both the Petitioners were submitted by the Respondent No.5. However, on 23.02.2016 the Respondent No.2 rejected the said proposal on the ground that as per G. R. Dated 02.05.2012 unless 100% absorption of surplus teacher is done no recruitment of teaching and non-teaching employees would be made and as per G. R. Dated 20.06.2014 the proposed committee shall take decision in respect of grant of approval as well as grant of permission of the new recruitment, but no such permission has been granted by the said committee.

4. The learned advocate appearing for the Petitioners submits that as per communication dated 23.02.2016 ban was imposed on new recruitment for filling the posts of teaching and non-teaching staff unless 100% absorption of surplus employees is done, but as per GR dated 02.05.2012 ban was lifted, therefore, there was no ban for recruitment on teaching/non teaching staff, however, Respondent No. 3 refused to accord approval to the appointment of Petitioners.

5. Therefore, being aggrieved by the said refusal, the Petitioner Nos. 1 and 2 had filed Writ Petition No. 3719/2016 before this Court. On 15.03.2017, this Court passed an order observing that, the proposal of Respondent No. 4 School for according approval to their appointment has not been considered mainly on ground that the appointments were made during operation of ban in respect of making appointments imposed by State Government and that no prior permission was sought from Committee. Further it was observed that though communications were made w.e.f. 20.03.2015 to December 2015 by the President of the School Committee for permission before making appointment, however, none of the communications have been answered by the Respondent Nos. 2 and 3, so also, it was not insistence for accommodating surplus teachers by the Education Officer, hence, the School Management cannot be blamed for violating guidelines. Therefore, failure of the Education Officer to follow the procedure the Petitioners cannot be put to any disadvantageous situation. Therefore, directions were given to Respondent No. 3 to consider the proposal for according approval to appointment of the Petitioners with further directions that the proposal shall not be rejected merely on ground that no prior permission was sought for making appointment or on ground that appointments were made during period of operation of ban.

6. However, on 31.08.2017 Respondent No.3 passed the impugned order and rejected proposal of Petitioners on following grounds : -

I. As per GR Dated 21.08.2013 filing up of the backlog of reserved category was

extended till 31.03.2014, however the appointments are of 21.09.2015.

II. In view of view of status quo granted by GR Dated 14.02.2015 to the earlier GR Dated 23.10.2013 the formation of new committee has not yet formed, therefore, till the staff schedule of non teaching staff is sanctioned filing up of vacancies is not permitted.

7. The learned advocate appearing for the Petitioners further submits that letters Dated 31.08.2017 and 05.09.2017 are not sustainable as the Respondent No. 3 is relying on G. R. dated 21.08.2013 which came to be extended till 31.03.2014 and further G. R. dated 23.10.2023 has been granted status quo. Therefore, by this petition the Petitioners prayed for quashing and setting aside letters dated 31.08.2017 and 05.09.2017.

8. The Respondent Nos. 4 and 5 filed their reply contending that for the academic year 2013-2014, total four posts of Class IV employees were sanctioned and staffing pattern in respect of non teaching staff was approved for the academic year 2014-2015, 2015-2016 and 2016-2017. Since four posts of Class IV employees were vacant, therefore the Managing Committee of the Education Society issued advertisement in Daily newspaper "Lokmat", however prior to that communication was issued to the Education Officer w.e.f. 20.03.2015 to December 2015, but the Respondent No.3 did not take any decision on the said proposal, therefore, the School Management Committee issued advertisement on 04.09.2015 in Daily Lokmat newspaper and invited applications and after conducting the selection process the Petitioner Nos.1 and 2 have been appointed to the post of Shipai Sevak. Thereafter, the proposal was submitted with the Respondent No.3 for approval of appointment of the Petitioner, however, said proposal was declined by the Respondents. Therefore, the Petitioners have filed Writ Petition No.3719/2016 before this Court and in pursuance of order dated 15.03.2017 passed by this Court (Coram: R.M. Borde and P.R. Bora, JJ.) the Respondent No.3 was directed to examine the proposal and to decide the same, however again on 31.08.2017 the Respondent No.3 rejected the said proposal on the ground that appointment of the Petitioner No.1 was made against reserved S. C. category and the appointment of the Petitioner No.2 was made from the open category without filling the backlog as per roster and GR dated 21.08.2013.

9. Per contra, Mr. Siddharth S/o Madhav Netkar, Deputy Education Officer (Secondary), Zilla Parishad, Jalgaon filed affidavit in reply and strongly opposed the petition mainly on the ground that the appointment of the Petitioner Nos. 1 and 2 in pursuance of advertisement published in Daily Lokmat on 04.09.2015, but prior to advertisement no prior permission was obtained by the Management Committee of the Education Society which runs the School and Junior College, so also the appointment of the Petitioner Nos. 1 and 2 contrary to the GR dated 02.05.2012, wherein it has been provided that unless 100% absorption of surplus teacher is made no recruitment of teaching and non-teaching employee shall be made, however the Managing Committee of the Education Society made

appointment of the Petitioner Nos. 1 and 2 contrary to the G. R. and there were surplus teachers. So also, as per GR dated 21.08.2013 the backlog of reserved category was extended till 31.03.2014 appointments are being made on 21.09.2015. So also, as per GR dated 12.02.2015 a committee constituted under the Chairmanship of Commissioner Pune (Education Department) to fix the revise staffing pattern for non-teaching staff and unless the said committee recommended the State Government, no fresh and vacant appointment of non-teaching staff can be made, however, the appointment of both the Petitioners have been made in contravention of GR dated 21.08.2013 and 12.02.2015. Therefore, the proposal was rightly rejected hence, prayed for dismissal of the petition.

10. It would be worthwhile to mention here that in earlier round of litigation both these Petitioners approached this Court by filing Writ Petition No.3719/2016 thereby seeking directions against the Respondent No.3-Education Officer to consider their proposal for grant of approval to their appointment for the post of Peon. It is a matter of record that on 15.03.2017 the Co-ordinate Bench of this Court passed the judgment holding that the President of the School Committee had issued communications from 20.03.2015 to December 2015, however the Respondent No.3-Education Officer has not answered the said communications. The Respondent No. 3-Education Officer also not issued any communication or list of surplus teachers who were to be accommodated with the Respondent Nos. 4 and 5 – Junior College / High School. Therefore, the School Management Committee cannot be blamed for violating guidelines and the Education Officer required to follow the procedure, the Petitioners cannot be put to any disadvantageous situation. Under these circumstances, the Respondent No. 4-Education Officer was directed to consider the proposal for grant of approval of the Petitioners and to pass appropriate orders as early as possible within a period of three months there from. However, again on 23.02.2016, the Respondent No.3 passed the impugned orders and again rejected proposal for grant of approval on the ground that though the Committee has been constituted as per GR dated 20.06.2014, but there was no recommendation for appointment of the Petitioners.

11. In the case in hand, earlier approval to the appointment of the Petitioners was rejected only on the ground that no prior permission was sought by Managing Committee of the School Committee prior to recruitment of the Petitioners, however said order was quashed and set aside by this Court in Writ Petition No.3719/2016 with direction to the Education Officer to reconsider the proposal of the Petitioners, but again under impugned order dated 23.10.2016, the Education Officer declined to grant proposal on the ground that there are no recommendation of the committee constituted under the Presidency of the Commissioner of Pune (Education Department) as per the GR dated 12.02.2015. However, it seems that the appointment of the Petitioners were made on 14.09.2015 in pursuance of advertisement dated 04.09.2015 and though the President of the School Managing Committee submitted various communications

with the Education Officer, but those communications remained undecided. The Respondent No. 3 has not come with the case that the list of surplus teachers which were recommended for absorption with the Respondent Nos.4 and 5 School / Junior College. The Respondent No.3 failed to give specific name of surplus teaching and non-teaching employees who were directed to be absorbed with the Respondent Nos. 4 and 5. Therefore, merely raising a ground that no teaching or non-teaching staff can be appointed by the Respondents 4 & 5 unless 100% surplus teachers are absorbed or unless the Committee constituted under the Chairmanship of Commissioner of Pune (Education Department) have approved staffing pattern for non-teaching staff and unless said committee recommends the Government for appointment, no fresh and vacant appointment of non-teaching staff can be made, does not appear to be justifiable.

12. Further, it is not the case of Respondent No. 3 that non-teaching staff were not approved with the Respondent Nos. 4 and 5. Per contra, it appears that on 08.08.2015 the Managing Committee of the High School and Junior College issued a communication to the Education Department, Commissioner Education, Education Director, Deputy Director and Education Officer, Zilla Parishad, Jalgaon and sought permission for filling up the post of teaching and non-teaching staff which were fallen vacant on account of retirement of the employees. The Respondent No. 3-Education Officer has not countered the said communication. Therefore, it cannot be held that appointment of the Petitioners were made without seeking permission. However due to failure on part of the Education Officer to follow the procedure, the Petitioners cannot be put to any disadvantageous situation. Since, the appointment of the Petitioners were made in 2015 and till date approximately nine years have been lapsed, therefore, considering strength of the students and vacancies with the Respondent Nos. 4 and 5, it would be just and appropriate to direct the Respondent No. 3 to examine the proposal of approval to the appointment of the Petitioners by considering the existing vacancies and requirement of the back log which has been fulfilled by the Respondent Nos. 4 and 5 - High School and Junior College.

13. In view of the above, the Petition is partly allowed. The Impugned Order dated 31.08.2017 issued by the Respondent No. 3 is quashed and set aside.

14. Rule is made partly absolute in above terms.