

(2016) 01 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition No. 5734 of 2015

Satish

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5, Section 5[1]

Citation : (2016) 2 BCR 331 : (2016) MCR 763 : (2016) 3 MhLJ 682

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : V.S. Panpatte, Advocate, for the Appellant; U.H. Bhogle, AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—1. Heard.

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

3. By way of filing this Writ Petition under Article 226 of the Constitution of India, exception is taken to the decision / order dated 13th May, 2015, passed by the respondent No. 2 -Education Officer, thereby refusing to grant approval to the appointment of the petitioner as Shikshan Sevak in respondent No. 3 School. It is further prayed that, the respondent No. 2 Education Officer may be directed to grant approval to the appointment of petitioner as Shikshan Sevak in respondent No. 3 School forthwith and release arrears of salary of the petitioner.

Background facts leading for filing the present Writ Petition, in nutshell are as under:

4. It is the case of the petitioner that, he is a trained teacher having qualification of B.A.D. Ed. The petitioner has passed D.Ed. examination held in September,

2011. The respondent No. 3 is a Primary School, receiving 100% grant-in-aid, wherein the petitioner is rendering his services. By the impugned decision / order, the respondent No. 2 Education Officer has refused to grant approval to the appointment of the petitioner as Shikshan Sevak in the respondent No. 3 School.

It is further the case of the petitioner that, respondent No. 3 School has been recognized by the Competent Authority, by order dated 2nd July, 1955, granting permission to run 1st to 7th Classes. The respondent No. 3 has also authorized to appoint employees having requisite qualifications. It is further the case of the petitioner that, by order dated 15th January, 2013, the respondent No. 2 sanctioned total 12 teaching staff in the respondent No. 3 School for the academic year 2012-13, and also in the subsequent year. The petitioner has annexed the said order along with memo of Writ Petition.

It is further the case of the petitioner that, on account of retirement of one Assistant Teacher, namely, Smt. Noorja Satar of respondent No. 3 School, the said post of Assistant Teacher which was permanent and sanctioned post, had fallen vacant on 31st January, 2013. Therefore, for filling in the said vacant post, respondent No. 3 by addressing a letter to the respondent No. 2 on 18th May, 2013, sought permission to fill in the said vacant post. The petitioner has placed on record copy of letter dated 18th May, 2013, addressed by the respondent No. 3 to respondent No. 2. It is the case of the petitioner that, respondent No. 2 neither responded to the said letter, nor granted permission as sought by the respondent No. 3 to fill in the said aforesaid vacant post. The respondent No. 3 waited for more than one month, however, there was no response from the respondent No. 2 and in order to avoid any further loss of students on account of having 1 teacher less, respondent No. 3 issued an advertisement in daily ? Gavkari?, dated 22nd June, 2013, advertising the vacant post of Shikshan Sevak and inviting eligible candidates for interview. The date of interview was fixed on 30th June, 2013. The petitioner has placed on record copy of advertisement issued by the respondent No. 3. In response to the said advertisement, the petitioner and other eligible candidates appeared for the interview on 30th June, 2013. After conducting interviews of the eligible candidates including the petitioner for the said vacant post of Shikshan Sevak, since the petitioner was found meritorious than other candidates, and therefore, he came to be selected for the said post. Accordingly, respondent No. 3, by issuing appointment order dated 2nd July, 2013, appointed petitioner to the said post of Shikshan Sevak for three years i.e. from 2nd July, 2013 to 1st July, 2016. The petitioner is in continuous service from his date of appointment till date in the respondent No. 3 School.

5. It is further the case of the petitioner that, respondent No. 3 submitted proposal on 6th July, 2013, for approval to the appointment of the petitioner in the office of respondent No. 3. The petitioner has placed on record copy of the said proposal submitted by the respondent No. 3 before the respondent No. 2.

However, it is the case of the petitioner that, respondent No. 2 Education Officer neither decided the said proposal, nor granted approval and did not communicate anything to the respondent No. 3 or to the petitioner about decision on the said proposal. The said proposal was kept pending for more than 1 and 1/2 year by the respondent No. 2 for the reasons best known to him and by the impugned decision, rejected approval to the appointment of the petitioner as Shikshan Sevak. Hence this Petition.

6. The learned counsel appearing for the petitioner submits that, earlier to the appointment of the petitioner, three surplus teachers were directed to be absorbed in the respondent No. 3 School and in pursuant to the said directions to absorb three surplus teachers, declared from other Schools, same have been absorbed in the respondent No. 3 School. It is further submitted that, respondent No. 2 should have immediately communicated his decision on proposal submitted by the respondent No. 3 for the approval of the appointment of the petitioner as Shikshan Sevak, however, respondent No. 2 waited for more than 1 year. It is submitted that, in view of the ratio laid down by the Division Bench of the Bombay High Court in the case of Shailaja Vs. State of Maharashtra 1998 [1] Mh.L.J. 291, in case the approval proposal is not decided within a period of 2 or 3 months, as the case may be, the concerned appointment or appointments may be deemed to have been approved, if such appointment / appointments is or are in accordance with the provisions of MEPS Act, MEPS Rules and the Government Resolutions issued from time to time.

7. It is further submitted that, the petitioner's appointment is in pursuant to the letter written by the respondent No. 3 to respondent No. 2, seeking permission to fill in the vacant post of Shikshan Sevak and also after issuing advertisement and following proper procedure as contemplated under MEPS Act and Rules, and therefore, as a natural corollary, the approval ought to have been granted by the respondent No. 2. It is submitted that, the State Government had issued a Resolution dated 13th August, 2004 and corrigendum letter on 25.10.2014, thereby making provision that, the surplus teachers of private primary schools, firstly be absorbed in other private recognized schools, and if there are no vacant posts in other recognized schools, surplus teachers shall be absorbed in the schools run by the Municipal Councils and Municipal Corporations, and thirdly for want of vacant posts in Municipal Corporation / Municipal Council, surplus teachers shall be absorbed in Zilla Parishad Schools. It is further submitted that, respondent No. 2 ought to have followed procedure laid down in the said Government Resolution, while giving direction to accommodate surplus teachers in other schools. However, without adhering to the procedure prescribed in the said Government Resolution, the respondent No. 2 directed absorption of the surplus teachers in respondent No. 3 School instead of sending the surplus teacher in the Zilla Parishad Schools. The learned counsel appearing for the petitioner invited our attention to the said Government Resolution and the Corrigendum letter dated 25th October, 2004, which is placed on record. It is submitted that, respondent No. 2 Education Officer was made aware about the

procedure adhered by the respondent No. 3, while appointing respondent No. 2, however, respondent No. 2 instead of granting approval to the appointment of the petitioner as Shikshan Sevak, refused to grant approval. It is submitted that, respondent No. 2 did not respond to the letter dated 18th May, 2013, written by the respondent No. 3 School, seeking permission to fill in the vacant post of Shikshan Sevak, neither communicated promptly to the respondent No. 3 that, there are surplus teachers on the roll of his office and the respondent No. 3 has to appoint surplus teacher on the said vacant post.

8. It is further submitted that, the respondent No. 2 has belatedly after 1 year of submitting proposal for approval to the appointment of the petitioner, relying upon clause 1.8 of the Government Resolution dated 2nd May, 2012, refused approval to the appointment of the petitioner, on the ground that said Government Resolution provides for 100% absorption of the surplus teachers. It is submitted that, petitioner with legitimate expectation that, approval will be granted to his appointment, discharged his duties as Shikshan Sevak with all sincerity and honesty, and therefore, respondent No. 2 ought to have granted approval to his appointment as Shikshan Sevak. It is submitted that, it is the question of livelihood of the petitioner, who has rendered services for more than 2 and 1/2 years, and therefore, the petitioner cannot be deprived from receiving monetary benefits due to refusal by the respondent No. 2 to grant approval to the appointment of the petitioner as Shikshan Sevak. The learned counsel appearing for the petitioner placed reliance in the case of Gopal Siddheshwar Akhade & others Vs. The State of Maharashtra in Writ Petition No. 2590/2013, delivered on 28th August, 2013 and submits that, once mandate of Section 5 of the said Act is met, the approval of the appointment as Shikshan Sevak should follow automatically. Therefore, relying upon the pleadings in the Petition, annexure thereto and rejoinder affidavit, the learned counsel appearing for the petitioner submits that, Petition may be allowed.

9. On the other hand, the learned counsel appearing for the respondent No. 2 relying upon the averments in the affidavit in reply, and affidavit in reply to the rejoinder affidavit of the petitioner made following submissions:

It is submitted that, the respondent No. 3 School run by Regimental Education Society is receiving 100% grant in aid. It is incumbent on the part of the said School to intimate any of the vacancy occurred in the said school to the office of the respondent No. 2 Education Officer Primary, Zilla Parishad, Aurangabad, as per section 5[1] of the MEPS Act, so that, the office of the respondent No. 2 can accommodate any of the surplus teachers from other private schools. It is submitted that, there are number of private school within Aurangabad District, which are receiving grant in aid. On account of various reasons, number of such teachers have been rendered surplus. Till the said surplus teachers are absorbed in other private or other schools, the Zilla Parishad / Government is required to pay them salary, without any work. This is unnecessary burden over the public exchequer for the fault of such private schools. Therefore, the above said

provision of section 5[1] of the MEPS Act contemplates the intimation / permission from the Education Officer [Primary] before filling in any of the vacancy in any private schools.

10. It is further submitted that, by virtue of Government Resolutions also, time to time such of the surplus teachers of the private schools have been absorbed in other private schools, schools run by Zilla Parishad etc. and some are also forwarded to the Deputy Director of Education, Aurangabad, for absorbing them at Regional level. It is submitted that, there were about 175 surplus teacher from the private primary schools. Out of which 61 surplus teachers were sent for absorption on the vacant post of different private schools. 75 surplus teachers were absorbed in the primary schools run by Zilla Parishad etc. and rest of the surplus were sent to the Deputy Director of Education, Aurangabad Region, for taking steps for their absorption. The surplus teachers which have been sent to the private aided primary schools for absorption, it is pertinent to note that, in spite of that many of such schools refused to accommodate them, thereby the unnecessary burden of payment of salary of surplus teachers comes on Zilla Parishad / Government from the public money for the fault of such private schools.

11. It is further submitted that, though it is stated by the respondent No. 3 School that, letter was sent on 18th May, 2013, to the respondent No. 2 for seeking permission to fill up vacancy. The said letter does not show any acknowledgment of the office of the respondent No. 2. It is submitted that, if at all the petitioner has been appointed contrary to the provisions of MEPS Act and Rules, the petitioner can claim salary from the respondent No. 3. It is submitted that, in view of Government Resolution dated 2nd May, 2012, clause 1.8, the act of the respondent No. 3 School / management to appoint the petitioner is in violation of the said clause. It is submitted that, there are 39 surplus teachers from the private institutions under Zilla Parishad, Aurangabad, who are not yet absorbed. It is submitted that, the contentions of the petitioner that, there are 230 vacant posts of primary teachers and trained graduate primary teacher in the Zilla Parishad, Aurangabad and in the said vacant post, 39 surplus teachers can be absorbed, is also not correct statement on facts. There are 181 vacant posts of the trained graduate primary teachers. Mostly of Maths, Science [140] and Marathi, Social Science [41]. As the said post being of trained graduate primary teachers the surplus Assistant Teachers, who are not trained graduate can not be absorbed on those posts. Furthermore, there are 30 vacant posts of Assistant Teachers of Marathi medium, however, already there is a backlog of SC [157], ST [90] and OBC [153]. Furthermore, the Assistant Teacher from VJ [A,B,C,D] and open categories are in excess. The 39 surplus teachers are from VJ [A,B,C,D] and open category, and therefore, there being already excess Assistant Teachers from the said categories, those 39 teachers also can not be absorbed on the said 30 vacant posts of Assistant Teachers.

12. It is submitted that, the office of respondent No. 2 vide its order of

absorption being No. 4030/005 dated 06.09.2014 has sent one Smt. Sheeladevi Raosaheb Gaikwad, Assistant Teacher, to the respondent No. 3 Regimental Primary School, Chawani. However, the said Head Master of the school / institution did not allow her to join the duties under the pretext that, said Sheeladevi is from Marathi medium. Therefore, her absorption order are required to be cancelled. However, it shows that, the petitioner was appointed without permission of the Education Department, whose D.Ed. is from Marathi medium itself. Further, one surplus Assistant Teacher Smt. Kastura Dashrath Waghmare was also sent for absorption vide order dated 24.12.2014 to the said respondent No. 3 School, however, she was also refused to absorb by the said School for the same reason. It shows that, the acts of the said respondent No. 3 School are in the nature of approbation and reprobation. The said respondent No. 2 has violated the said orders of Education Officer / Government Resolution, as the appointment of the petitioner is not in accordance with law. Therefore, the contentions of the petitioner in para No. 12 of the rejoinder are not correct. The contents in para No. 13 and 14 of the rejoinder are also not correct. The copies of the absorption order dated 06.09.2014 of said Smt. Sheeladevi Gaikwad absorption order dated 24.12.2000 have placed on record, which is at Exhibit-R1. The learned counsel appearing for the respondent No. 2 placed reliance in the case of Priyadarshini Education Trust & Ors. Vs. Ratis [Rafia] Bano d/o. Abdul Rasheed and others , 2007 [6] Mh.L.J. 667 and submits that, procedure / principles laid down in the said Judgment are required to be followed while making appointments in public employment. Therefore, he submits that, Petition may be dismissed.

13. The learned AGP appearing for the respondent No. 1 submits that, respondent No. 3 ought to have followed the Government Resolution dated 2nd May, 2012, and also the provisions of MEPS Act and Rules.

14. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, learned AGP appearing for the respondent No. 1, learned counsel appearing for the respondent No. 2 and the learned counsel appearing for the respondent No. 3. With their able assistance, perused the pleadings in the Petition, annexure thereto, affidavit in reply filed by the respondent No. 2, rejoinder filed by the petitioner, and the reply filed to rejoinder affidavit by the respondent No. 2, and also provisions of MEPS Act and Rules and the Judgment cited across the bar by the learned counsel appearing for the petitioner and the respondent No. 2. Upon careful perusal of the documents placed on record, it appears that, as per staffing pattern, total 14 teaching and non teaching posts are sanctioned / approved by the respondent No. 2 in the respondent No. 3 School. It further appears that, one vacant post of Assistant Teacher became vacant due to retirement of one namely Smt. Noorja Satar from the respondent No. 3 School. The said post became vacant is not in dispute.

15. It further appears that, the respondent No. 3, by letter dated 18th May,

2013, sought permission of the respondent No. 2 to advertise afore-mentioned post. It is stated in the said letter that, one teacher, namely, Smt. Noorja Satar stood retired on 31st January, 2013, on attaining the age of superannuation. The management of the School is Army Ad hoc Management. In the past three surplus teachers have been absorbed by the management as directed by the respondent No. 2. Since one post is vacant and in order to avoid any further loss of the students, the respondent No. 3 may be allowed to fill in vacant post. It further appears from the perusal of the Exhibit-C Page-18 of the compilation of the Writ Petition that, advertisement was given in daily news paper 'Gavkari', on 22nd June, 2013, advertising post of Assistant Teacher. In the said advertisement, date of interview was fixed on 30th June, 2013.

16. Upon perusal of the document placed at Exhibit-D Page-19, it further appears that, on 2nd July, 2013, the respondent No. 3 issued appointment letter to the petitioner, appointing him as Shikshan Sevak for the period of 2nd July, 2013 to 1st July, 2016 on terms and conditions mentioned in the said appointment letter. The petitioner was appointed on the honorarium of Rs. 6000/- per month. Nothing is brought on record by the respondent No. 2 to show that, petitioner has not rendered satisfactory services as Shikshan Sevak in pursuant to his appointment. Though, it is stated by the respondent No. 2 in the affidavit in reply that, the office of the respondent No. 2 has not received letter from the respondent No. 3, seeking permission for advertising the post of Assistant Teacher and further for the appointment, the letter which is placed on record at Exhibit-B shows that, the respondent No. 3 had written a letter to the respondent No. 2. It is true that, there is a Government Resolution dated 2nd May, 2012, issued by the School Education and Sports Department, wherein in clause 1.8, it is stated that, unless all surplus teachers are absorbed, the management of the private school or schools run by the local bodies should not go ahead with the appointment of the teachers. However, it was incumbent upon the respondent No. 2 to promptly find out the position about vacancy from the respondent No. 3 School or maintain the record in his office about schools run by the private managements and also local bodies in the entire District under the control of Zilla Parishad about existing vacancies, and also vacancies likely to occur in future. There is no denial to the submission made in the letter dated 18th May, 2013, written by the respondent No. 3 to the respondent No. 2 that, the respondent No. 3 accommodated three surplus teachers as directed by the respondent No. 2.

17. It further appears that, vacancy arose on 31st January, 2013, and thereafter, the respondent No. 3 waited till 22nd June, 2013, to advertise said post. The respondent No. 3 cannot shrink from his responsibility to maintain position of the vacancy in the private schools and also schools run by the local bodies under the control of Zilla Parishad and then inform them in advance not to fill in the said vacancy / vacancies, without prior permission of the Education Officer so as to absorb the surplus teachers in such schools. It is also incumbent upon the Education Officer to ask all the schools under the control of Zilla Parishad to communicate the position of the vacancies likely to occur during the particular

academic year. It is possible for the Education Officer to find out regularly from the concerned schools about position of the vacancies, since grant in aid / approval and sanctions are granted by the Education Officer time to time to the appointments and for other purposes as prescribed under the procedure. In our opinion, it is not difficult for the Education Officer to maintain position of the vacancies likely to occur in the institutions and direct the said institutions in advance to absorb surplus teachers. The respondent No. 2 can also ask the school management to communicate the position of vacancies likely to occur in the particular academic year in the school.

18. In the facts of the present case, as already observed, though vacancy occurred on 31st January, 2013, on account of retirement of one teacher Smt. Noorja Satar, the respondent No. 2 did not take any steps to ask the respondent No. 3 to absorb the surplus teacher. It further appears that, the management of the respondent No. 3 has also written a letter on 18th May, 2013, seeking permission for advertising and appointment on the post of vacant Shikshan Sevak, and thereafter, after one month advertisement was issued. It further appears that, though the proposal of the petitioner for approval of the appointment of the petitioner was sent to the respondent No. 2 on 6th July, 2013, the respondent No. 2 did not take steps till 13th February, 2015. It further appears from the documents placed on record that, the petitioner was required to approach this Court, seeking direction to the respondent No. 2 to decide proposal submitted by the respondent No. 3, in respect of the approval to his appointment as Shikshan Sevak. This Court in Writ Petition No. 443/2015 issued directions on 13th February, 2015, to the respondent No. 2 to decide the said proposal for approval. Therefore, it appears that, the respondent No. 2 has not taken diligent steps in accordance with the procedure established and kept proposal of the petitioner pending for approval for considerable period. Therefore, the learned counsel appearing for the petitioner is right in placing reliance in the case of Shailaja [cited supra], wherein this Court in para No. 27 [c] observed that, in case the approval proposal is not decided within a period of two months or three months, as the case may be, the concerned appointment or appointments may be deemed to have been approved, if such appointment or appointments is or are in accordance with the provisions of the M.E.P.S. Act, M.E.P.S. Rules and the Government Resolutions issued from time to time.

19. It further appears from the documents placed on record that, the respondent No. 2 asked respondent No. 3 to accommodate one surplus Assistant Teacher namely Kastura Waghmare, vide order dated 24th December, 2014. Therefore, it shows that, there was belated attempt on the part of the respondent No. 2 to forward the name to the respondent No. 3, to absorb afore-mentioned surplus teacher, when the petitioner was already appointed on 2nd July, 2013, on said vacant post, by issuing appointment letter, and proposal for approval of his appointment was pending in the office of the respondent No. 2. Therefore, in the peculiar facts and circumstances of this case and the fact that, the petitioner has rendered more than 2 and 1/2 years service, even on equitable ground he is

entitled to seek approval from the respondent No. 2. In the peculiar facts and circumstances of this case and keeping in view the documents placed on record by the petitioner and in particular the fact that, respondent No. 2 in past, as already observed, absorbed three surplus teachers as directed by the respondent No. 2, hence bona fides of respondent No. 3 cannot be doubted that, it has no intention to honour directions issued by the respondent No. 2. We make it clear that, henceforth in future it will be obligatory on the part of the respondent No. 3 to communicate, at least 6 months in advance to the respondent No. 2, about vacancies likely to occur in future in the School, so as to enable the respondent No. 2 to take appropriate steps in accordance with the MEPS Act and Rules and also relevant Government Resolutions. We make it clear that, mere sending letter by the respondent No. 3 to the respondent No. 2 communicating position of vacancy or seeking permission to fill in vacant post by advertising the same would not suffice, and the respondent No. 3 shall, henceforth obtain acknowledgment of the office of the respondent No. 2 of receiving such communication / letter written by the respondent No. 3, seeking permission for advertising vacant post.

20. In the light of the discussion in the foregoing paragraphs, the impugned decision / order dated 13.05.2015 passed by the respondent No. 2 -Education Officer, thereby refusing to grant approval to the appointment of the petitioner as Shikshan Sevak in respondent No. 3 School, is quashed and set aside. The respondent No. 2 is directed to reconsider proposal of the petitioner for the approval of his appointment as Shikshan Sevak, as expeditiously as possible, however, within 4 weeks from today, without raising ground that, there are surplus teachers available on the roll of respondent No. 2, however, subject to the fulfillment of other conditions, if any, prescribed in the relevant procedure / Rules.

21. Petition is partly allowed. Rule made absolute on above terms. Petition stands disposed of accordingly.