

(2021) 01 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 3525 Of 2019

Shrikrishna Bhikaji Bondge	Vs	APPELLANT
State Of Maharashtra & Ors		RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Citation : (2021) 01 BOM CK 0011

Hon'ble Judges : Surendra P. Tavade, J;S.C. Gupte, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surendra P. Tavade, J

1. Rule.

2. Rule made returnable forthwith by consent of parties. The petition is heard finally.

3. The Petitioner is seeking relief that the impugned order passed by Respondent No.2 dated 09 July 2018 be quashed and set aside and to grant

approval to his appointment as a peon on the establishment of Respondent No.4 since date of his appointment i.e on 1 July 2009. He also claims salary

in grant in aid since date of his appointment.

4. Respondent No.3 is an educational institute registered under the provision of Maharashtra Public Trust Act, 1950. On 4 May 2009 Respondent

No.3 issued advertisement in daily newspaper for filling up the 1 / 9 post of peon in the establishment of Respondent No.4, which is the school run by

Respondent No.3. The Petitioner applied for the post of peon. After complying the procedure, he was appointed as a peon with effect from 1 July

2009. Respondent No.4 submitted proposal seeking approval to the appointment

of the Petitioner to Respondent No.2 on 19 September 2009.

Respondent No. 2 replied to the said communication and directed that the Petitioner should submit his application for approval in individual camp. On 3

March 2010 in pursuance of the direction of Respondent No.2, the Petitioner submitted fresh proposal for approval to Respondent No.2 in the

individual camp. In turn Respondent No.2 informed the Petitioner that, although the Government Resolution (for short GR of 2009) permits to

make appointment as per stafng pattern contemplated in GR of 2005, however, certain persons working in other schools in the district are likely to be

declared surplus and approval of the Petitioner was not granted. Since the aforesaid communication dated 6 March 2009, surplus employee was not

sent to be absorbed for the post of peon in the establishment of Respondent No.4. No surplus teacher was there, the said fact is not denied by

Respondent Nos. 1 and 2.

5. It is contended that the GR dated 12 February 2015 and 23 October 2013 are not applicable to the facts of the present case. Those GRs are not

having retrospective efect. Respondent No.2 has not provided surplus staf in place of the Petitioner, therefore, the action of Respondent No.2 is not

legal and valid. Hence, the Petitioner fled the present petition.

6. Respondent No. 2 appeared and fled afdavit-in-reply through Bhimrao D. Tonape, Deputy Education Ofcer (Secondary), Zilla Parishad Kolhapur.

It is contended that the present petition is misconceived and hopelessly bared by limitation. It is contended that Respondent No.3 and 4 had submitted

proposal dated 3 March 2010 for approval of appointment of the Petitioner as a peon. The said proposal was rejected by Respondent No. 2 on the

ground that there was availability of surplus post in Kolhapur district. The said order was never challenged by Respondent Nos. 3 and 4. Therefore,

the Petitioner cannot make fresh application for grant of approval. It is contended that following GRs are relevant for the purpose of deciding validity

of Order dated 6 March 2010 as well as Order dated 9 July 2018:-

(a) 25.11.2005 (Exhibit-1)

(b) 06.02.2009 (Exhibit-2)

(c) 13.03.2009 (Exhibit-3)

(d) 10.11.2009 (Exhibit-4)

(e) 10.06.2010 (Exhibit-5)

(f) 12.02.2015 (Exhibit-6).

7. It is contended that by aforesaid GRs, the Petitioner was not eligible for appointment of peon on the ground that there was excess number of peons

in respect of school run by Respondent No.4 as per the GR dated 25 November 2005. No permission was sought for giving advertisement dated 4

May 2009 for the appointment of peon by Respondent Nos.3 and 4. Hence, it is prayed that the writ petition be dismissed with costs.

8. Heard learned counsel on behalf of the Petitioner and learned counsel for Respondent No.2. It is the case of the Petitioner that he was appointed as

a peon in the establishment run by Respondent Nos. 3 and 4 on 30 June 2009 with effect from 1 July 2009. Respondent No.4 submitted proposal for

seeking approval to the appointment of the Petitioner by letter dated 19 September 2009. The said proposal was simply returned back with the

direction that the Petitioner should submit the proposal in individual camp. Accordingly, on 3 March 2010 the Petitioner submitted fresh proposal to

Respondent No.2 in the individual camp, the said proposal was considered by Respondent No.2 and passed order dated 6 March 2010. The said

proposal was returned to Respondent No.4 by informing that although the GR of 2009 permits to make appointment as per the stafng pattern

contemplated in the GR of 2005, however, certain persons are working in the school in the district are likely to be declared surplus and said persons

will have to be absorbed, therefore, the said approval was not granted.

9. In view of the above order, it is to be seen that it is not case of Respondent No.2 that in the year 2009, there was surplus staf for appointment of

peon in place of the Petitioner. It is also to be noted that Respondent Nos. 3 and 4 submitted fresh application on 1 June 2018 for approval of

appointment of the Petitioner. The same was rejected on the ground that two GRs dated 12 February 2015 and 23 October 2013 were issued and

there was status-quo order on recruitment. Hence, the facts remains on record that since 2009 till 2018, Respondent No. 2 did not send any surplus

person in place of the Petitioner as a peon in the establishment of Respondent No. 4. No material is placed on record by Respondent No.2 that there

was surplus staf in the other schools of the district at the time of appointment of the Petitioner and even subsequent to that.

10. The learned counsel for Respondent No. 2 heavily relied on the GRs dated 12 February 2015 and 23 October 2013 mentioned in the reply. On this

point, learned counsel for the Petitioner submits that the Petitioner was appointed in the post of peon on 1 July 2009, impugned order was passed on

the basis of GRs namely, 12 February 2015 and 23 October 2013. He also submitted that GRs relied by Respondent No. 2 in paragraph No. 6 of the

reply are subsequent to the appointment of the Petitioner.

11. Learned Counsel on behalf of the Respondents submits that, in view of GRs dated 12 February 2015 and 23 October 2013, there was status-quo

order on recruitment of non-teaching staf in the establishment of school, therefore, said GRs are squarely applicable to the facts of the present case.

12. The factual position on record accordingly shows that the Petitioner was appointed as a peon on the establishment of Respondent No. 4 on 1 July

2009. Respondent Nos. 3 and 4 submitted the proposal for approval of appointment of the Petitioner on 19 September 2009. The said proposal was not

rejected by Respondent No. 2, it was simply returned back with direction to submit it in individual camp. There was no averment in the letter issued by

Respondent No. 2 that there was surplus employees in the cadre of peon in the year 2009. Respondent Nos. 3 and 4 submitted second proposal on 3

March 2010. The said proposal was rejected on the ground that certain persons working in the school in the district are likely to be surplus and said

persons will have to be absorbed. If that was the case, then it was expected from Respondent No. 2 to send proposal of any surplus person on the

establishment of Respondent No. 4 till 2018, but no steps are taken by Respondent No. 2 for supplying surplus person in the place of the Petitioner. So

it appears that there was not surplus persons in any school in the district

13. Learned counsel for the Respondent No.2 to invite out attention GRs dated 12 February 2015 and 23 October 2013. GR dated 23 October 2013 is

regarding stafng pattern however clause-4 of the said GR specifcally mentions that the guidelines which was existing with respect to non-teaching staf

as per the GR dated 25 November 2005 will not comply after 23 October 2013. As per GR dated 12 February 2015 concerns it stipulates that status

quo to be maintained with respect to appointment and new posts and vacant posts should not be filed in any circumstances. It is thus clear that status

quo was directed to be maintained from 12 February 2015 directing that no 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 1 July 2009 was either vacant or new post as contemplated under GR dated 12 February 2015. Be that as it may that these GRs which are subsequently to the appointment of the Petitioner are not applicable to the case of the Petitioner.

14. Learned counsel on behalf of the Petitioner as relied on the Judgment of this Court in the case of Suman Shriram Kakad (supra) V/s. State of Maharashtra and others reported in 2011 (1) Mh.L.J. In the said case also the question was whether the GR dated 5 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.

15. It is the case of Respondent No.2 that Respondent Nos. 3 and 4 have submitted that there is a delay in submitting second proposal of the Petitioner. The said delay is not explained, hence, the petition is not maintainable. On this point, it is already observed that, in the second order it is reported that there is possibility of surplus persons in other schools of district. Therefore, permission for approval was not granted. The second order was passed on 6 March 2010, it appears that Respondent Nos. 3 and 4 waited for appointment of surplus person for about eight years but Respondent No. 2 did not send any surplus person in place of the Petitioner. Hence, Respondent Nos. 3 and 4 has submitted fresh proposal on 1 June 2018. It appears that there was no surplus persons in the non-teaching staff, therefore, the post of peon in the establishment of Respondent No.4 was not filled up by Respondent No. 2, therefore, there is no substance in the ground of delay. Respondent No. 2 itself had not taken steps for filling the vacant post

in the place of the Petitioner. In view of the above discussion, we are of the opinion that the impugned order passed by Respondent No.2 is not legal

and valid. Hence, the same is quashed and set aside. The petitioner is in continuous service since 1 July 2009 on vacant post. Hence, his approval for

his appointment is required to be granted. With this, we pass the following order.

ORDER

1. Impugned order dated 9 July 2018 is hereby quashed and set aside.
2. The Respondent No. 2 is hereby directed to grant approval to the appointment of the Petitioner as peon in the establishment of Respondent No. 4, since date of his appointment i.e 1 July 2009 forthwith.
3. We direct Respondent No. 2 to release grant in aid for payment of salary of the Petitioner since date of his appointment with all consequential benefits.
4. No order as to costs.