

(2015) 04 BOM CK 0157
In the Bombay High Court
Case No : Writ Petition No. 11107 of 2014

Vankatesh

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 BOM CK 0157

Hon'ble Judges : S.S. Shinde, J; P.R. Bora, J

Bench : Division Bench

Advocate : A.N. Nagargoje, Advocate holding for H.S. Bali, for the Appellant;
V.H. Dighe, AGP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.

1. Heard.
2. Rule. Rule made returnable forthwith heard with the consent of the parties.
3. This Petition is filed under Article 226 of the Constitution of India taking exception to the impugned order dated 15.11.2014 passed by the Respondent No. 3, with further prayer to direct the respondent Nos. 2 to 4 to release monthly salary of the petitioner since October, 2014 onwards. It is further prayed that, the respondent Nos. 2 and 3 be directed to restore, maintain and regard the order of approval dated 28.08.2012 and confirmation order dated 06.08.2013 granted to the appointment of the petitioner as Shikshan Sevak as well as Assistant Teacher and grant seniority, pay scale and all other advantages / benefits as per Rules to the petitioner on the basis of orders of approval.
4. It is the case of the petitioner that, petitioner belongs to Open Category and he is working on the School, which is receiving 100% grant in aid since long back. Due to promotion of senior most teacher, the post became admissible and

vacant. It is the further case of the petitioner that, before appointing the petitioner, respondent No. 5 had taken steps of ascertainment of vacancy position from respondent No. 3 and soliciting permission for filling the vacant post. Thereafter, advertisement came to be published in "Daily Sanjwarta" on 09.07.2010. It is the further case of the petitioner that, on 15.07.2010 and 15.07.2013, initially, petitioner is appointed on the vacant post as Shikshan Sevak for a period of three years from respective categories and after completion of three Years period, he came to be confirmed and appointed as an Assistant Teacher on regular basis. Respondent No. 5 management is running respondent No. 5 Secondary School wherein post held has been created due to the promotion of senior most teacher on the post of Headmaster. It is the further case of the petitioner that, the respondent No. 5 submitted the proposal for grant of approval to the respondent No. 3 within stipulated period and same has been considered and granted approval in favour of petitioner, initially, as Shikshan Sevak by an order dated 28.08.2012, and thereafter, as an Assistant Teacher on regular basis by an order dated 06.08.2013 granted permanent approval.

5. It is the further case of the petitioner that, in spite of repeated request, the proposal for grant of approval was kept pending. Therefore, the petitioner approached the respondent No. 3 and submitted the copy of the Judgment and Order passed in the case of Shaileja Walse Vs. State of Maharashtra and others in Writ Petition No. 9885/2011 in support of the claim of the petitioner, wherein it is held that, the proposal submitted by the management shall not be rejected on the ground of availability of surplus teachers, therefore, the Education Officer examining entire material and satisfying himself about compliance of legal requirements relating to the petitioner's appointment, and considered the Judgment of the Hon"ble High Court, rightly accorded approval to the appointment of the petitioner. Therefore, there is no illegality while granting approval to the appointments of the petitioner on the part of the respondent No. 3.

6. It is the further case of the petitioner that, one Mr. Rajaram Mudholkar filed complaint on 16.01.2013 to the Secretary of the concerned Department that, in spite of availability of surplus teachers, the Education Officer had granted approval in favour of newly appointed candidate contrary to the Government Resolution dated 02.05.2012. The petitioner filed Writ Petition No. 5981/2013. It is the further case of the petitioner that, in pursuance of the order in the above mentioned Writ Petition, three members Enquiry Committee was appointed, and said Committee submitted its report and concluded that, the petitioner was not entitled for approval, and therefore, approval granted was irregular, but said report was never supplied to the petitioner.

7. It is the further case of the petitioner that, on 08.08.2014, on the basis of the said report, respondent No. 2 directed to initiate an action for cancelling approval granted by respondent No. 3. On 25.08.2014, in pursuance of the Enquiry Report, respondent No. 2 directed not to include the name of the petitioner in the

monthly salary bill in future. It is the further case of the petitioner that, on 06.09.2014, respondent No. 3 by his letter dated 06.09.2014 called upon the petitioner to submit his say. Accordingly, petitioner has submitted his say to the respondent No. 3. On receipt of the said report, respondent No. 2 - Deputy Director, Latur, directed respondent No. 3 to initiate inquiry for cancelling or withdrawing of approvals granted to the appointment of concerned teachers including petitioner.

8. It is the further case of the petitioner that, on 15.11.2014, in obedience to the order of the respondent No. 2, the respondent No. 3 by his order dated 15.11.2014 has communicated to the respondent No. 5 - School that, approval granted to the appointment of petitioner stand cancelled, on the ground of his appointment being against the post for OBC category. Hence this Writ Petition.

9. The learned counsel appearing for the petitioner submits that, the petitioner is appointed in accordance with the law, after adhering to the procedure for the appointment as Shikshan Sevak. It is submitted that, in pursuance to the advertisement for the post of Shikshan Sevak from Open Category, the petitioner did apply and he was selected and appointed, subsequently his services came to be approved. It is submitted that, to the shock and surprise of the petitioner, the respondent No. 3 Education Officer [Secondary], Zilla Parishad, Nanded has cancelled the approval to the services of the petitioner. It is submitted that, the respondents have not adhered to the principles of natural justice while passing drastic order of refusal to grant approval to the services of the petitioner.

10. The learned counsel appearing for the petitioner invited our attention to the documents placed on record and submits that, the Petition deserves to be allowed.

11. On the other hand, the learned counsel appearing for the respondents, relying upon the reasons recorded by the Education Officer, and also the Deputy Director of Education, submits that, the appointment of the petitioner was on the seat which was reserved for the candidate from OBC category, and therefore, it is rightly held that, the approval granted to the services of the petitioner is contrary to the Rules.

12. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the respondent Nos. 1 to 3 and the learned counsel appearing for the respondent Nos. 4 and 5, with their able assistance, perused pleadings and grounds taken in the Petition and annexures thereto, and the copies of the documents placed on record. Upon perusal of the documents placed at Exhibit-A, it appears that, the respondent No. 5 advertised the post of Shikshan Sevak from the Open Category, and accordingly, the applications were invited and after completing the process of selection, appointment order was issued in favour of the petitioner on 15th July, 2010 on the post of Shikshan Sevak. The said copy of the appointment letter is also placed on record. Upon perusal of the document at

Exhibit-B, which is a letter written by the Headmaster of the Respondent No. 5 to the Education Officer [Secondary], Zilla Parishad, Nanded, it appears that, the proposal was submitted for approval to the post, on which petitioner is appointed, and accordingly, by letter dated 28th August, 2012, the respondent No. 3 Education Officer has communicated the respondent No. 5 that, approval is granted to the appointment of the petitioner as Shikshan Sevak for the Year 2010 on two conditions, firstly, said approval is granted keeping in view the sanctioned strength of the students to the division, and secondly, afterwards if it is noticed that, there is any mistake about number of students or division, then, the Head Master will be held responsible. Except these two conditions, it was not mentioned that, the petitioner's appointment is on the post meant for the candidate from OBC category. It further appears that, the Education Officer by letter dated 6th August, 2013 granted approval for continuation of the services of the petitioner on the post of Shikshan Sevak and also the pay scale subject to the relevant procedure and policy. Upon change in the Education Officer [Secondary], Zilla Parishad, Osmanabad, a letter was written by the newly transferred Education Officer for enquiry in respect of appointment of the petitioner on the post of Shikshan Sevak and also in respect of other appointments, and accordingly, the Deputy Director of the Education granted permission to the Education Officer to cause enquiry, and thereafter, after hearing the concerned parties, the Education Officer [Secondary], Zilla Parishad, Nanded has passed the impugned order, thereby holding that, the appointment of the petitioner Shri Vankatesh Jaiprakash Gangamwar as Shikshan Sevak is other than from OBC category, and therefore, the said is contrary to the Rules, and therefore, the approval granted to the services of the petitioner on 15th July, 2010 stands cancelled.

13. On considering the entire material placed on record and in particular the advertisement, the appointment letter of the petitioner, approval granted by the Education Officer, and also approval for continuation of the petitioner on the post of Shikshan Sevak in particular pay scale, unequivocally indicates that, the petitioner was appointed as per the relevant procedure against the open post as it is evident from the perusal of the advertisement. The rights are crystallized in favour of the petitioner. The petitioner, who is qualified and appointed in accordance with the procedure established and the relevant provisions, cannot be non suited after 5 years from his date of appointment, thereby causing serious prejudice to his interest. It was for the respondent authorities to take into consideration all relevant factors while appointment of the petitioner or at the earliest opportunity of granting his approval to the services of the petitioner.

14. Prima facie, in our opinion, respondent authorities have failed in their duties at the relevant time and belatedly tried to make an attempt to dislodge the petitioner from the post of Shikshan Sevak, contrary to the material available on record. In that view of the matter, in our considered view, the Petition deserves to be allowed partly. Accordingly, Petition is allowed in terms of prayer clause-B. In addition to the prayer clause-B, we direct the respondent Nos. 2 and 3 to

restore, maintain and follow the order of approval dated 28.08.2012 and the confirmation order dated 6th August, 2013 at Exhibit-C granted to the appointment of the petitioner as Shikshan Sevak.

15. Petition is allowed to above extent, same stands disposed of.