
(2022) 09 BOM CK 0111
In the Bombay High Court
Case No : Writ Petition No.429 Of 2010

Yashwant

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Citation : (2022) 09 BOM CK 0111

Hon'ble Judges : S.B. Shukre, J;G. A. Sanap, J

Bench : Division Bench

Advocate : S.P. Bhandarkar, Mallika Goenka, K.L. Dharmadhikari

Final Decision : Partly Allowed

Judgement

S.B. Shukre, J

1. The matter is more than a decade old and needs to be heard and decided finally now. Accordingly, we have heard Shri K.L. Dharmadhikari, learned AGP for the respondent Nos. 1 to 3.

2. On going through the paper book of this petition, we find that there is substance in the submission of learned AGP for the respondent Nos.1 to 3 when he argued that this petition is devoid of merits as the appointment of the petitioner as Special Teacher in the school run by respondent No.4 was without seeking any prior permission, was on reserved post, for which the petitioner was not eligible and was basically illegal. We find these submissions to be correct from the facts revealed by the record of the case. We also find that simultaneously petitioner had worked on two posts and which is not permissible. We do not find merit in this petition. At this juncture, Ms Mallika Goenka, learned counsel holding for Shri S.P. Bhandarkar for the petitioner has appeared and has prayed for grant of time in the matter.

3. Since learned counsel is present, we are giving an opportunity for making her submission in the matter.

4. Now Shri S.P. Bhandarkar, learned counsel for the petitioner has also appeared before the Court. We have heard him. Shri Bhandarkar, learned counsel for the petitioner graciously concedes that on a post reserved for scheduled tribe category candidate, candidate belonging to some other category or open category like the petitioner cannot be appointed. But, he submits that there were special circumstances which existed at the time the petitioner was initially appointed on 1.07.2002 as a special teacher. He points out from the finding of facts recorded by the Divisional Social Welfare Officer, Nagpur in his order dated 16.08.2007 that in spite of issuance of the advertisement by the management, no candidate for filling up the posts of special teacher reserved for Scheduled Tribe Category candidate became available and therefore, the management, in the interest of students, appointed the petitioner from open category. He submits that it was this reason that made Divisional Social Welfare Officer, Nagpur to issue a direction to the District Social Welfare Officer for sending a proposal to him seeking temporary approval of the appointment of the petitioner till the post of special teacher was filled up from among the candidates belonging to Scheduled Tribe Category by following appropriate procedure.

5. Shri Bhandarkar, learned counsel further submits that following the permission granted by this Court in its order dated 14 March, 2014, the management initiated the process of filling up the post of Special Teacher from among candidates belonging to Scheduled Tribe Category and now that post has been filled up by issuing appointment to a candidate belonging to Scheduled Tribe Category. He further submits that in the circumstances, only issue that has remained in this case is of payment of salary to the petitioner for the period for which he has actually rendered his service as a Special Teacher.

6. These new developments are consistent with the findings recorded by us earlier and therefore, the only issue that has remained to be resolved in this petition is of payment of salary for the period, for which the petitioner actually worked as Special Teacher and also the respondents on which the liability for payment of arrears of salary should be fastened.

7. From the paper book of the petition, we find that the petitioner had simultaneously worked on two posts, one as a special teacher and other as mobile teacher in Zilla Parishad, Chandrapur for some period of time. This period of time was from 02.11.2006 to 01.10.2010. For this period of time, the petitioner would not be entitled to receive any salary payable to the post of special teacher and none of the respondents would be liable to pay this salary. However, for the remaining period of time during which the petitioner has worked as special teacher in the school run by respondent No.4, the petitioner would be entitled to receive the salary and this salary, now forming arrears of salary, would have to be paid only by respondent No.4 and no liability for payment thereof shall arise against State Government, for the reason that the respondent No.4 had made the appointment without following due procedure of law.

8. In the result, we partly allow the petition and direct respondent No.4 to pay

the arrears of salary to the petitioner for the period, for which he has actually worked as special teacher in the school run by it barring the period from 2. 11.2006 to 01.10.2010, if the same has not been already paid to the petitioner. Payment of arrears of salary shall have to be made alongwith simple interest @ 7% per annum for the period, for which the payment was due. The above direction shall be complied with by respondent No.4 within eight weeks from the date of the order, failing which the petitioner shall have the liberty to execute this order by treating it as decree passed by the Civil Court.

Rule is made absolute in the above terms. No costs.