

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 9435 OF 2014**

GIRIPRASAD GUNWANTRAO MANGANALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Gunale V.D.
AGP for Respondent/State : Mr. A.V. Deshmukh
Advocate for Respondent nos. 3 and 4 : Mr. N.D. Kendre

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CORAM : S.S. SHINDE & P.R. BORA, JJ.**Dated: February 29, 2016**

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PER COURT :-

Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

2. It is the case of the petitioner that, the Respondent – Management appointed the petitioner on probation for two years, on clear and vacant post on 20th June, 2006. The petitioner, on completion of his D.Ed. course in the year 2008, was issued appointment on regular basis. Respondent No.4 – School is running 5th to 10th standard classes. The said school is also receiving grants from the Government for 5th to 10th standard from the year

2008. The Respondent – Management forwarded the proposal to the Education Officer for approval to the appointment of the petitioner. It is the further case of the petitioner that, because of the rival group in the Management, the petitioner was restrained from signing the muster roll and orally terminated the services w.e.f. 11th November, 2008. The petitioner approached the School Tribunal by filing appeal and the said appeal came to be dismissed.

3. It is the further case of the petitioner that, further fresh advertisement was issued by the Respondent – Management for the post of Shikshan Sevak. The petitioner applied in pursuant to the said advertisement. He was selected and appointment order was issued to him, and on 28th June, 2010, the Education Officer granted approval to the appointment of the petitioner as Shikshan Sevak w.e.f. 28.06.2010, for a period of three years on consolidated salary of Rs. 3,000/- per month. On 17th June, 2013, the Respondent – Management resolved to continue the petitioner in the services as Assistant Teacher, and accordingly the proposal was forwarded to the Respondent

No.4 for approval and continuation of the petitioner as assistant teacher. However, the Respondent No.4 rejected the said proposal. Hence this Petition.

4. In pursuant to the notices issued to the respondents, the Respondents have filed their reply. The learned counsel appearing for the Respondent – Management has invited our attention to the undertaking filed on record, stating therein that, due to non-availability of the candidate from S.T. category, the appointment on the post of Shikshan Sevak from the said category could not be materialised and hence, the petitioner was appointed. There is further assurance in the said undertaking that, the Respondent – Management will fill in the said next vacancy from the candidate belonging to S.T. category.

5. The learned A.G.P. appearing for Respondent State, relying upon the averments in the affidavit in reply, submits that, while granting initial approval, the same was granted on the condition that, the Respondent – Management will get verified the roaster from B.C. Cell. However, the Respondent – Management did not undertaken

the said exercise, as a result his proposal for approval is rejected by the Respondent – Education Officer.

6. We have heard the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the petition, annexures thereto, reply filed by the Respondent No.2 and also by the Respondent Nos. 3 and 4.

7. Admittedly, the Respondent – management was supposed to fill in the vacancy from the S.T. category, however, circumstances are brought on record that, the candidate from the said category was not available, therefore, the petitioner was appointed. The learned counsel appearing for the petitioner has invited our attention to the judgment of the Full Bench of Bombay High Court in the case of **Ram Avadh Mahel Pal V/s Shivdutta Educational Trust and ors.**¹ and submits that, on completion of three years successful period, the petitioner who was appointed as Shikshan Sevak on regular basis, on completion of the said period, deemed to have been appointed on regular

1 2007(6) All M.R. 716

basis. He also invited our attention to the another judgment in the case of **Lalitha Thutpi V/s C.B. Karkhanis, Presiding officer, School Tribunal Bombay and others**² and submits that, in the facts of that case, the Division Bench took a view that, if the qualifications are possessed by the candidates and two years probation period is completed, in that case, such appointment deserves to be protected, by directing the Respondent – Management to carry forward the post for the reserved category.

8. Upon perusal of those judgments, if the ratio laid down in those two judgments have applied in the present case, we find that, in the present case also the petitioner has completed three years service as Shikshan Sevak, initially approval was granted to his services and there is assurance by the Respondent – management that, on immediate next vacancy, the Management will appoint the candidate from S.T. category. Therefore, for the reasons aforesaid and since the petitioner has completed more than three years probation period and possess requisite qualification, the petitioner is entitled for the relief claimed

2 1998(1) Mah. L.R. 235

in the Petition.

9. In the result, the impugned communication is quashed and set aside. The Respondent No.2 – Education Officer is directed to reconsider the proposal for granting approval to the services of the petitioner and for continuation of the petitioner, as an Assistant Teacher, as expeditiously as possible, and preferably, within eight weeks from today.

10. Needless to observe, the Education Officer shall not raise the grounds raised in the impugned communication while rejecting the approval to the services of the petitioner, however, subject to fulfillment of usual formalities grant approval to the services of the petitioner by obtaining the specific undertaking from the Respondent – management that, on immediate next vacancy, the Respondent – Management will appoint the candidate from S.T. category.

11. The Petition is partly allowed and same stands disposed of.

12. Rule made absolute in the above terms.

(**P.R. BORA, J.**)

(**S.S. SHINDE, J.**)

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