

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 810 OF 2018

DISTRICT : PUNE

Shri Tanaji Laxman Savane)
Assistant Deputy Education Inspector,)
Directorate of Minorities and Adult)
Education, [M.S], Pune.)
Residing at and Post Loni-Kalbhor,)
Tal-Haveli, Pune.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
School Education and Sport)
Department, Madam Cama Road,)
Mantralaya-Extension)
Mumbai 400 032.)
2. The Commissioner [Education],)
Pune, having office at Central)
Building, Pune – 01.)
3. Deputy Director [Education], M.S)
Pune, having office at)
Central Building, Pune – 01.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms Medha Gadgil (Member) (A)

RESERVED ON : **24.09.2021**

PRONOUNCED ON : **30.09.2021**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. Heard Shri M.D Lonkar, learned advocate for the applicant and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicant, who was appointed as Primary Teacher initially and promoted to the post of Assistant Deputy Education Inspector, challenges the order dated 14.8.2018, issued by Respondent no. 1, directing Respondent no. 2 to cancel the order of promotion.

3. Affidavit in reply dated 19.12.2018 on behalf of Respondent no. 3, is filed by Meenakshi B. Raut, Deputy Director of Education, Pune Region and so also affidavit in reply dated 15.7.2021 on behalf of Respondent no. 1, is filed by Charushila D. Chaudhari, Deputy Secretary. In the said reply, the Respondents have denied the allegations and contentions raised in the Original Application and Government has taken a specific stand that the cadre of Primary Teacher cannot be changed to that of Assistant Deputy Education Inspector.

4. The applicant has filed affidavit in rejoinder on 7.1.2020 and maintained the stand that he had been granted promotion on

2.1.2016 to the post which was lying vacant from 17.3.2003. So filling up the available vacant post is in consonance with the recruitment rules prevailing at the time when the said vacant post became available.

5. Respondents no 1, 2 & 3 filed affidavit in sur-rejoinder through Hemant P. Watade, working as Junior Administrative Officer in the office of Deputy Director of Education, Pune Region, Pune, dated 17.3.2021. The Respondents have stated that the promotion of the applicant was illegal mainly on the ground that the applicant was not eligible to be promoted to the post of Assistant Deputy Education Inspector and to promote him was irregularity on the part of the Respondents.

6. Learned counsel for the applicant, Mr Lonkar has submitted that it was the duty of the Respondents to give him show cause notice before issuing order dated 14.8.2018. Learned counsel further submitted that not giving show cause to the applicant is against the principles of natural justice. He has further submitted that the applicant was given promotion on 2.1.2016 to the post of Assistant Deputy Education Inspector from the post of Primary Teacher. The applicant had challenged the said order dated 14.8.2018 by filing this Original Application and this Tribunal by order dated 31.8.2018, while granting interim stay to the said order has observed that the case involves matter of interpretation of rules. Learned counsel for the applicant Mr Lonkar, further submitted that on 31.5.2021 the applicant has retired. However, he is not given pension, gratuity and other pensionary dues for which he is entitled to because of the order of cancellation of promotion dated 14.8.2018.

7. Learned C.P.O Ms Swati Manchekar, submitted that the applicant was promoted from the post of Primary Teacher to the post of Assistant Deputy Education Inspector, by change of cadre. The said order of promotion is issued by the Deputy Director of Education on 2.1.2016, due to misunderstanding and miscommunication. Learned C.P.O relied on the Notification dated 27.5.2005 of School Education and Sports Department and pointed out that the appointment which are made under Rule 4 are only in the cadre holding the same cadre and the cadre of Primary Teacher and Assistant Deputy Education Inspector are two different cadres. She submitted that the Government by order dated 14.8.2018 has directed the Commissioner, (Education), M.S, Pune, to cancel the promotion order dated 22.12.2015 and take further action. Learned C.P.O submitted that the Government in fact, had not passed any order of reversion of the applicant. It was a communication between the two offices and immediately the applicant has approached this Tribunal and by order dated 31.8.2018 the communication was stayed. Therefore, the Department could not take further action of issuing the reversion order. Learned C.P.O further submitted that the Government wanted to rectify the mistake as the order which was issued was illegal and therefore, it was not necessary for the Government to issue show cause notice to the applicant before reverting him.

8. The issue involved is very short. Let us address the Notification dated 27.5.2005, which was issued in the exercise of powers conferred by the proviso to Article 309 of the Constitution of India, in respect of regulating recruitment to the post of various officers in the Education Department. The post of Assistant Deputy Education Inspector, which was officiated by the applicant by way of promotion and is subject matter of dispute, is also one of such posts. Hence, the recruitment to that post is covered under

the said Notification. In Rule 6 of the said Notification, it is stated that appointment to the post of Assistant Deputy Education Inspector in Regional Deputy Directorate of Department “shall be made by transfer on the basis of seniority from amongst the persons holding any post in the cadre and possessing a degree of Bachelor of Education with school subjects and having at least three years teaching experience after acquiring a degree of Bachelor of Education”.

9. Thus, the person is appointed on transfer on the basis of seniority holding any post in the cadre and having the requisite Educational Qualification and experience. Therefore, we have to find out which are equivalent posts in the cadre.

10. Learned C.P.O has rightly drew our attention to Rule 2(a) of the Notification dated 27.5.2005, which reads as under:-

“2(a) “Cadre” means Maharashtra Educational Service Administrative Officer of Municipal School Board, Assistant Deputy Educational Inspector, Assistant Project Officer, Assistant Teacher in Junior Colleges of Education, Co-ordinator, Counsellor, Extension Officer in State Council of Educational Research and Training, Pune, Lecturer in Junior Colleges, Programme Assistant, Science Supervisor, District Science Supervisor, Subject Assistant, Subject Expert and Technical Assistant cadre.”

By plain reading of the definition, under the rules the post of Primary Teacher is not covered under the definition “cadre”. Therefore, as per the rules, the applicant who was holding the post of Primary Teacher cannot be promoted just by issuing order and without following the due procedure to the post of Assistant Deputy Education Inspector. The applicant by letter dated 30.9.2015 addressed to the Deputy Director of Education has requested that his cadre is to be changed and he is to be promoted. On receipt of the said letter, the Commissioner, Education by letter dated 22.12.2015 wrote to the Regional Deputy

Director, Pune that the case of the applicant is to be placed before the Departmental Promotion Committee (D.P.C) and then the said Committee will consider his eligibility. If the applicant is found eligible by the Committee, then the applicant will be considered for promotion. It appears that this particular letter was not properly understood but misread by the office of the Deputy Director of Education, Pune. Hence, instead of placing the case of the applicant before the Departmental Promotion Committee to consider his eligibility as per rules, directly the order of change of cadre and giving promotion was issued by order dated 2.1.2016, which is against the said rules.

11. The applicant was not eligible for promotion to the post of Assistant Deputy Education Inspector by transfer as the post of Primary Teacher was not in the cadre as defined under Rule 2 of the Notification dated 27.5.2005. Thus, the order was illegal and therefore, he was required to be reverted to the post of Primary Teacher, when it was noticed in the year 2018 by the Government. If any order by the Office or Department de hors the rules, then the error or illegality is required to be removed or corrected and thus the Government is right in correcting such error by following the proper procedure.

12. Let us address to the order dated 14.8.2018, which is under challenge. It is clear that letter dated 14.8.2018 is a communication from the Respondent-State to the office of Commissioner, Education, M.S, Pune. It is not actual order of cancellation of promotion. It is a direction given by the Government to the office of the Commissioner, Education, M.S, Pune that the order of promotion and change of cadre of the applicant is not in consonance with the Notification dated 27.5.2005. Hence, the direction of change of cadre and promotion is to be cancelled and

to take necessary action. Thus, the Department of School Education was supposed to follow the due procedure and take necessary action. However, the applicant has approached this Tribunal and got the order staying the said communication dated 14.8.2018. Thus, the Respondent, Commissioner, Education had no opportunity to either issue show cause notice to the applicant and to take further action of reversion which was directed by the Respondent-State.

13. Learned C.P.O has relied on the decision of the Hon'ble Supreme Court in Kishore Chandra Panigrahi VS. State of Orissa & Ors, (1996) 1 SCC 234. In the said case the Hon'ble Supreme Court has held that while deciding the validity of promotion of a Clerk, temporary promotion of an employee to a higher post contrary to the provisions of the Recruitment Rules does not confer any right to the employee against the said promoted post and therefore, reversion to the substantive rank cannot be held to be penal in nature.

14. Thus, we find that there is no merit and substance in the Original Application. We hold that the order of change of cadre and promotion granted to the applicant to the post of Assistant Deputy Education Inspector is not in consonance with the existing Rules of 2005. Hence, the letter dated 14.8.2018 issued by the Respondent-State to the office of the Commissioner, Education, M.S, Pune is valid and correct. Hence we need to vacate the interim relief dated 31.8.2018 granted by this Tribunal and we reject the prayer of the applicant.

15. It is necessary to mention that the applicant in between retired on 31.5.2021. The office of the Commissioner, Education, M.S, Pune is free to take necessary action. Thus, even if the order

of reversion is issued, it will remain on paper only. The applicant retired on 31.5.2021 and it will be difficult for the department to recover the amount already paid to the applicant. Hence, we made query to the learned C.P.O, on the point of recovery. Learned C.P.O, on instructions has submitted that the Government does not want to recover the amount which was already paid to the applicant towards salary on the promotional post of Assistant Deputy Education Inspector. However, the Respondents want to fix the pension and pay fixation on the post of his cadre of Primary Teacher.

16. In view of the above, we pass the following order.

- (a) Original Application stands dismissed. We hold that the order of change of cadre and promotion given to the applicant to the post of Assistant Deputy Education Inspector is not in consistent with the existing Rules of 2005.
- (b) The interim relief granted by this Tribunal on 31.8.2018 is hereby vacated.

**Sd/
(Medha Gadgil)
Member (A)**

**Sd/-
(Mridula Bhatkar, J.)
Chairperson**

**Place : Mumbai
Date : 30.09.2021
Dictation taken by : A.K. Nair.**