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wp 5334.18(R).odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5334 OF 2018.

Smt. Manisha Yadav Gaikwad,
Age 33 years, Occ. Service,
R/o. Chare, Tq. Barshi,
Dist. Solapur.

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Region, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
4. The Secretary,
Mahatma Gautam Shikshan
Prasarak Mandal, Kallam,
Tq. Kallam, Dist. Osmanabad.
5. The Head Master,
Janajagruti Madhyamik Vidyalaya,
Kallam, Tq. Kallam,
Dist. Osmanabad.

.. Respondents.

Mr. R.R. Suryawanshi, Advocate for the petitioners
Mr. V.M. Jaware, AGP for respondent Nos. 1 to 3,
Mr. R.K. Jadhavar, Advocate for respondent No.4.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 31st January, 2024.
PRONOUNCED ON : 1st March, 2024.

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. The petitioner approaches this Court under Article 226 of the Constitution of India impugning the order dated 26.5.2016 by which the proposal for approval of appointment of the petitioner on the post of Shikshan Sevak has been rejected by the respondent No.3 – Education Officer (Secondary).

2. The petitioner contends that she is qualified as M.A. B.Ed. and belongs to Scheduled Caste. She was eligible for appointment on the post of Assistant Teacher. The respondent No.4 society runs educational institution i.e. Janajagruti Madhyamik Vidyalaya at Kallamb having recognition since the year 1982 and receiving 100% granted-in-aid. An advertisement was issued on 11.3.2012 by respondent No.3 inviting applications from the eligible candidates for appointment to the post of Shikshan Sevak. The petitioner applied in response to the said advertisement. She was interviewed by the competent School Education Committee on 25.7.2014. Since, she was meritorious candidate, the respondent No.4 issued appointment order in her favour. The proposal for approval of such appointment was forwarded to the respondent No.3 – Education Officer. However, same came to be rejected vide impugned order dated 26.5.2016 on the ground that the selection of the petitioner is not in terms of the Govt. Resolution dated 20.6.2014, she does not possess TET qualification. Further, appointment is not in terms of the conditions laid down under Govt. Resolution dated 6.2.2012. The

impugned order further records that as per the Seniority List of 2015-16 in all 13 teachers are working in the school hence no post was available as per the approved staffing pattern.

3. According to the petitioner, before issuing the advertisement, school management had made communication with dated 27.6.2011, with Education Officer seeking permission to publish the advertisement for appointment of teachers against the vacant posts on retirement/death of 3 employees. However, the same was not replied by the Education Officer. Thereafter, vide communication dated 3.1.2012 management sought permission to issue the advertisement for recruitment of teachers. It was not responded. According to petitioner, her appointment is against a clear and vacant post in tune with reservation roster. The reasons in the impugned order for rejection of her approval are unsustainable. She is working in the school since date of her appointment. However, the approval has been wrongly rejected.

4. Respondent Nos. 4 and 5, by filing their affidavit in reply, supported the contentions of the petitioner.

5. However, respondent No.3 – Education Officer, opposed the prayers in the petition on the ground that in the year 2013-14 number of sanctioned posts was reduced in school. As per the staffing pattern, one post of Head Master and 11 posts of Assistant Teacher were approved. During further two academic years, the posts were reduced. All the posts as per the staffing pattern are already occupied by the teachers and approved. It is further contended that 2 other teachers have been appointed in the year 2014-15 by the respondent No.4 management. As such, there is no room to grant approval in favour of the petitioner. It is

further contended that as per the Government Resolution dated 2.5.2012, there was prohibition for making appointment since there were surplus teachers waiting for absorption. As per the Govt. Resolution dated 20.6.2014, the District Selection Committee is constituted for granting permission and appointing staff on clear and vacant posts. However, the management has failed to follow the guidelines/procedure under the aforesaid Govt. Resolution. The advertisement dated 11.3.2013 was contrary to the staffing pattern. Any appointment made under such advertisement would be illegal and cannot be approved.

6. Apparently, the respondent No.4 runs respondent No.5 school which is receiving 100% grant-in-aid. The school is operational since the year 1982. The institution had submitted application dated 27.6.2011 and 3.1.2012 to Education Officer/Respondent No.3 seeking permission to fill up the vacant posts, occurred on account of retirement/death of the teachers. The documents placed at Exhibit B bears the endorsement of the office of respondent No.3. Unfortunately, there was no reply. It appears that respondent No.3 issued advertisement dated 11.3.2013 inviting applications from the eligible candidates in "Daily Kuldaivat" for appointment of teachers in the subjects of Marathi, Hindi, English, Science and Maths. The petitioner responded to the said advertisement. She was interviewed on 17.3.2013 by the School Committee. Being a suitable and meritorious candidate, the management issued appointment order in her favour. It appears that the proposal for approval to the appointment of petitioner's appointment was moved by the respondent No.5 - Head Master alongwith his communication dated 7.4.2016, which came to be rejected vide order dated 26.5.2016 passed by the Education Officer for the reasons, as indicated above.

7. Mr. R.R. Suryawanshi, learned advocate for the petitioner would submit that the petitioner was qualified candidate, belonging to Scheduled Caste category. She applied in pursuance to the advertisement issued by respondent No.4 management, which was preceded by two applications submitted to the Education Officer seeking permission to advertise the vacancies. He would submit that the School Committee interviewed and recommended appointment of the petitioner. There is no dispute regarding her qualification and eligibility for appointment to the post of Teacher. However, the Education Officer, on erroneous reasons declined to grant approval. He would submit that the Education Officer refers to the seniority list of 2015-16 in respect of the school to demonstrate number of teachers working as per the staffing pattern. However, the petitioner was interviewed in pursuance of advertisement in the year 2013. The roster as well as advertisement shows clear vacancy for the reserved category. He would further point out that looking to the vacancies as on the date of advertisement, the case of the petitioner ought to have been considered. He would further point out that the Govt. Resolution dated 6.5.2012 was not in operation when the recruitment process was initiated by respondent No.3. Similarly, Govt. Resolution dated 6.2.2012 has no application in the facts of the case. According to him, the order impugned is erroneous and contrary to the facts and law.

8. Learned AGP, however, supports the impugned order contending that although the advertisement is dated 11.3.2012, the appointment of the petitioner is dated 25.7.2014. Therefore, the position of staffing pattern as on the date of appointment of the petitioner will

have to be looked into. He would further point out that there was backlog of 1 post for Scheduled Caste, 1 post of Scheduled Tribe and 2 posts for OBC in the roster for the year 2013-14. The advertisement was not in tune with the reservation of posts and the policy underlying in the Govt. Resolution holding the field.

9. We have considered the submissions advanced by the learned advocates for the respective parties. We have perused the record submitted before us. It can be gathered that the management made communication dated 27.6.2011 as well as 3.1.2012 to the Education Officer and apprised about the vacancy fallen on account of retirement or death of the teachers in the institution. As per communication dated 3.1.2012, the permission was sought to advertise and fill up the vacant posts since the students were suffering for want of the teachers in relevant subjects. Both the aforesaid communications appears to have been duly served and acknowledged by the office of Education Officer. There is nothing to show that the cognizance of aforesaid communication was taken by the Education Officer or the management was apprised about any difficulty in granting permission to advertise the posts. In this backdrop, it would be necessary to look into the staffing pattern and reservation roster as it was operating during the academic year 2011-2012, or 2012-13. The perusal of the staffing pattern for 2011-12 shows that there were in all 11 posts of teacher including Head Master. The staffing pattern for the academic year 2012-13 shows that in all 13 posts of teachers including Head Master were sanctioned. Again, during academic year 2013-14, 12 posts of teachers including the Head Master were sanctioned. The reservation roster dated 7.3.2012 depicts that the one post for ST category is sanctioned and available.

10. Apparently, the respondent management issued an advertisement dated 11.3.2012 thereby inviting applications from the qualified candidates in respective subjects. The advertisement shows that the reservation was marked and all the posts advertised were for the reserved categories. In pursuance of said advertisement, the petitioner responded and submitted her candidature. She was interviewed on 17.3.2012 by the School Committee. The merit list appears to have been prepared. The petitioner's name appears in the select list for the subject of Hindi. It is pertinent to note here that on 20.11.2012, one more post of Teacher fell vacant with the school on retirement of Mr. N.T. Rote who was teacher for Hindi subject. It appears that the petitioner is given appointment order dated 25.7.2014 in pursuance of aforesaid selection process. She joined on duty w.e.f. 1st August, 2014. The management forwarded the proposal for appointment of petitioner dated 7.4.2016. The Education Officer passed the impugned order dated 26.5.2016 thereby rejecting the proposal. The reasoning adopted by the Education Officer indicates that he considered the staffing pattern for academic year 2013-14 and the seniority list for the academic year 2015-16 while considering the proposal seeking approval to the appointment of the petitioner. It is trite that the proposal for approval to the appointment will have to be considered as on the date of the advertisement of the post. Since the petitioner is appointed in pursuance of the advertisement dated 11.3.2012, it would be appropriate to consider the entitlement of the petitioner as on the date of the advertisement. The staffing pattern for the academic year 2012-13, indicate that there were 13 posts sanctioned. If any vacancy arose immediately thereafter even that can be considered or taken into account for adjusting the petitioner. The record

shows that on account of retirement of Mr. N.T. Rote on 20.11.2012, the post of Hindi Teacher fell vacant.

11. Apparently, the impugned order dated 26.5.2016 indicates that the rejection of the approval is for erroneous reasons. Firstly, the Education Officer ought to have considered the position as on the date of the advertisement. The staffing pattern and the reservation roster approved by competent authority is available on record depicting position as on date of the advertisement. The another reason given by the Education Officer is that the petitioner is not qualified as TET. The provision for the TET qualification is based on the Govt. Resolution dated 6.5.2013. That may not apply to the case of the petitioner since she has been appointed in response to the advertisement issued in the month of March, 2012. Even the guidelines laid down under the G.R. Dated 20.6.2014 may not retrospectively apply to the case of the petitioner. In that view of the matter, we find that the rejection of the proposal for grant of approval under impugned order can not be sustained under law. We, therefore, deem it proper to relegate the matter for re-consideration to Education Officer. Particularly, taking into account the fact that the petitioner is appointed from the reserved category and she holds the necessary qualification for appointment as a teacher in the subject of Hindi. It is true that the Education officer will have to consider the position as on the date of the advertisement and the availability of the vacancy as per staffing pattern and also the reservation roster as on the date of the advertisement. Resultantly, we proceed to pass the following order :-

∴ ORDER ∴

[a] The writ petition is partly allowed.

[b] The impugned order dated 26.5.2016 passed by the respondent No.3 Education Officer, Zilla Parishad, Osmanabad is hereby quashed and set aside;

[c] The respondent No.3 is hereby directed to reconsider the proposal dated 7.4.2016 forwarded by the respondent No.4 and 5 in respect of the appointment of the petitioner dated 25.7.2014, as per the staffing pattern and reservation roster as on 11.3.2012.

[d] The respondent No.3 shall consider the legal position and procedure prescribed under various Government Resolutions as on the date of advertisement i.e. 11.3.2012.

[e] In case the respondent No.4 has appointed any teacher subsequent to the date of appointment of the petitioner, against the vacancy that was available as on the date of the advertisement, that shall not be impediment for considering the appointment and approval of the petitioner

[f] The writ petition is accordingly disposed of.

[S.G. CHAPALGAONKAR, J] [SMT. VIBHA KANKANWADI, J]

grt/-