

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

WRIT PETITION NO.5687 OF 2003

Mrs. Vijaya Himmatrao Desale,
Age 28 years, Occ. Service,
R/o "Ramkuti", 65,
Anand Nagar, Near Indira Garden,
Dhule

... PETITIONER

VERSUS

1. Jayhind Educational Trust,
Dhule, through its Chairman,
Deopur, Dhule.
 2. Jayhind High School and
Junior College, Dhule,
through its Principal, Dhule.
 3. Education Officer (Secondary),
Zilla Parishad, Dhule.
 4. Dy. Director of Education,
Nashik Region, Nashik,
 5. State of Maharashtra
through Secretary,
School Education Department,
Mantralaya, Mumbai
(Copy to be served on the
Govt. Pleader, High Court of
Bombay, Bench at Aurangabad)
- ... RESPONDENTS

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Shri L.V. Sangit, Advocate for petitioner
Shri S.P. Shah, Advocate for respondents No.1 and 2
Mrs. Y.M. Kshirsagar, A.G.P. For respondent No.5/State
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W I T H
WRIT PETITION NO.5688 OF 2003

Smt. Rekha Gulabrao Patil,
Age 34 years, Occ. Asstt. Teacher,
R/o "Chudamani", 148,
Jayhind Colony, Dhule

... PETITIONER

VERSUS

1. Jayhind Educational Trust,
Dhule, through its Chairman,
Deopur, Dhule.
2. Jayhind High School and
Junior College, Dhule,
through its Principal, Dhule.
3. Education Officer (Secondary),
Zilla Parishad, Dhule.
4. Dy. Director of Education,
Nashik Region, Nashik,
5. State of Maharashtra
through Secretary,
School Education Department,
Mantralaya, Mumbai
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... RESPONDENTS

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Shri L.V. Sangit, Advocate for petitioner
Shri S.P. Shah, Advocate for respondents No.1 and 2
Mrs. Y.M. Kshirsagar, A.G.P. For respondent No.5/State

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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 25th March, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. The petitioners in both these petitions are appointed initially as Shikshan Sevaks and thereafter as Assistant teachers. The approval was initially granted to the appointments of the petitioners. However, subsequently it has been withdrawn by the impugned order. Mr. Sangit, the learned counsel for petitioners submits that the impugned order withdrawing the approval granted to the appointments of the petitioners has been passed without notice to the petitioners and without hearing the petitioners. The learned counsel submits that, pursuant to the interim orders passed by this Court, the petitioners are performing their duties with the respondent School. The learned counsel submits that, in fact at the relevant time when the petitioners were appointed, there was no backlog. The learned counsel submits that, the petitioners have become permanent by virtue of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act.

2. Mr. Shah, learned counsel for the management submits that, in fact there was no backlog at the relevant time. According to the learned counsel, after seeking permission from the authorities, the advertisement was given and by following due procedure the appointments have been made.

3. Learned A.G.P. states, as there was a backlog of reserved category candidates, the approval has been rightly withdrawn.

4. In fact, to consider whether the backlog of reserved category candidates was available or not, the roster approved by the B.C. Cell would be relevant. None of the parties have produced the roster approved by the B.C. Cell. At the relevant time when petitioners were appointed, the reservation as provided by the Maharashtra Employees of Private Schools (Conditions of Service) Act and Rules was 33%, which has been subsequently made to 50%. The authority in the impugned order also nowhere says as to the backlog of a particular category of reservation. Only vague order is passed that there is backlog of reservation and as such the approval is withdrawn.

5. Considering the above, the impugned orders are

quashed and set aside. The respondents/ authorities shall consider the reservation applicable at the time when the petitioners were appointed i.e. 33% and consider the roster as approved by the B.C. Cell and consider to grant approval to the appointment of petitioners afresh. In case at the time of the appointments of the petitioners there was no backlog of reserved category candidates, then the authority shall grant approval to the appointments of the petitioners, of course, in case there is no other legal impediment.

6. In case the authority finds that at the relevant time there was backlog of reserved category candidates and the said backlog still continues, then the management shall fill in the post from the reserved category candidates, of which the backlog is there. The authority shall not reject the proposal seeking approval to the appointment of petitioners only on the ground that there was backlog of reserved category candidates. Rule accordingly made partly absolute. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)