

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

WRIT PETITION NO.4508 of 2015

Rajendra s/o Sopanrao Deshmukh,
Age :- 36 years, Occ: Service,
As an Assistant Teacher in
Shri Virbhadra Vidyalaya,
Dhotre Taluka Kopargaon,
District Ahmednagar.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department ,
Mantralaya, Mumbai - 32.
2. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar.
3. The President / Secretary,
Dahigaon (Bolka) Shaikshanik
Samajik Va Arogya Seva Trust,
Dahigaon (Bo.), Taluka Kopargaon,
District Ahmednagar.
4. The Head Master,
Shri Virbhadra Vidyalaya,
Dhotre, Taluka Kopargaon,
District Ahmednagar.

...RESPONDENTS

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Shri Amol N.Kakade, Advocate for Petitioner;
Shri K.S. Patil, AGP for Respondent Nos. 1 and 2;
Mr. Mahesh S.Taur, Advocate for Respondent Nos. 3 and 4.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date of reserving the judgment : **21.12.2015.**

Date of pronouncing the judgment : **23.12.2015.**

JUDGMENT : (PER P.R.BORA, J.)

1) Heard. Rule. Rule made returnable and heard forthwith with the consent of the parties.

2) Petitioner who is serving as Shikshan Sevak in respondent No.4 school run by respondent No.3 Educational Institution has filed the present petition taking exception to the communication cum order dated 03.02.2015 passed by respondent No.2 and has also sought direction against respondent No.2 to grant approval to his appointment.

3) The approval has been refused to the appointment of the present petitioner on the post of Shikshan Sevak by respondent No.2 vide his communication dated 03.02.2015 on the ground that, there is a backlog of one post for Scheduled Tribe candidate. In the affidavit in reply filed on behalf of respondent No.2 also that is the sole ground raised in oppose of the present petition.

4) We have heard the learned Counsel appearing for the respective parties, and have also perused the documents

filed on record. Following facts are not in dispute:

- i) That, before making the appointment of the petitioner, advertisement dated 27.07.2011 was published inviting applications for the post of Shikshan Sevak.
- ii) That, the advertisement was published after obtaining the permission from respondent No.2 vide his letter dated 04.07.2011.
- iii) That, in the advertisement so published, it was specifically mentioned that the post of Shikshan Sevak was to be filled in from the 'open' category.
- iv) That, the requisite qualification prescribed in the advertisement was B.A. B.P.Ed.
- v) That, petitioner made an application for such appointment in pursuance of the aforesaid advertisement.
- vi) That, petitioner was holding the qualification of B.A. B.P.Ed. on the date of making such application.
- vii) That, petitioner was selected and was accordingly issued with an order of appointment on 29.08.2011.
- viii) That, the petitioner joined as Shikshan Sevak with Respondent No.4 school with effect from 02.09.2011.

ix) That, on 16.11.2011 proposal was submitted to respondent No.2 by respondent No.3 seeking approval for the appointment of the petitioner.

x) That, the deficiencies time to time pointed out by respondent No.2 were removed and the necessary compliances were made by respondent No.3 institution.

xi) That, presently also two posts of Shikshan Sevak are vacant in the respondent No.4 school.

xii) That, the respondent No.3 institution has already sought permission from respondent No.2 to fill in the the said two vacant posts.

xiii) That, according to the roster of 2014 there is a backlog of one Scheduled Tribe candidate.

xiv) That, the respondent No.3 institution has furnished an undertaking on 28.12.2014 to the respondent No.2 that, it undertakes to fill up the backlog of Scheduled Tribe candidate, while filling in two vacant posts for which it has already sought permission from the respondent No.2 Education Officer.

xv) In the undertaking so filed, the respondent No.3 has also undertaken to get joined any surplus teacher belonging to

Scheduled Tribe Category, if so forwarded by the office of respondent No.2.

5) Having regard to the undisputed facts as mentioned herein above, it appears to us that, the respondent No.2 has unjustly refused the approval to the appointment of the petitioner on the post of Shikshan Sevak. It is quite clear that, the petitioner has been selected by following due process of law. It is further quite evident that, the post which was advertised at the relevant time was to be filled in from the open category candidate, and such advertisement was published with the permission of respondent No.2. Taking into account the undertaking submitted by respondent No.3 institution to fill up the backlog immediately in the next appointment and further that two posts are lying vacant, respondent no.2 ought to have granted approval to the appointment of the petitioner subject to removal of the backlog by respondent No.3 institution.

6) In the above circumstances, and for the reasons stated, we are, inclined to pass the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned communication dated 03.02.2015 is quashed and set aside.

- (iii) Subject to furnishing of an undertaking by respondent Nos. 3 and 4 to the effect that, Scheduled Tribe candidate will be appointed while filling in the next vacancy, respondent No.2 Education Officer shall grant approval to the appointment of the petitioner to the post of Shikshan Sevak from 02.09.2011 to 01.09.2014 and shall also grant the petitioner all consequential benefits.
- (iv) Rule is made absolute in above terms. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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S.P.Rane