

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

WRIT PETITION NO.8136 OF 2014

Vinod s/o. Babanrao Kadam,
Age 31 Years, Occu: Service,
R/o. Kallam, Tq. Kallam,
Dist. Osmanabad

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through Secretary, School Education
Department, Mantralaya, Mumbai – 32.
[Copy to be served on Govt. Pleader
High Court of Judicature of Bombay
Bench at Aurangabad]
- 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,
Jan Jagruti Madhmik Vidyalaya
Kallam, Tq.Kallam, Dist.Osmanabad

RESPONDENTS

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Mr. R.R.Suryawanshi, Advocate for the Petitioner
Mr. R.K.Jadhavar, Advocate for Respondent Nos. 4 & 5
Mr. P.P.More, AGP for Respondent – State

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

**Reserved on : 24.03.2015
Pronounced on: 01.04.2015**

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.
- 2] Rule. Rule made returnable heard forthwith with the consent of the parties.
- 3] This Petition is filed with following prayer:
 - B] By issuing writ of certiorari or any other appropriate writ, order or directions in like nature to quash and set aside the impugned letter dated 30.8.2013 [Exh.G] issued by the respondent No.3 Education Officer [Secondary], Zilla Parishad, Osmanabad rejecting the approval to the petitioner as a Shikshan Sevak in respondent No.5 School and to issue directions to the respondent No.3 Education Officer [Secondary] Zilla Parishad, Osmanabad to grant approval to the petitioner as a Shikshan Sevak in respondent No.5 School and to release the payment of salary as per the pay-scale from the date of appointment dated 22.3.2012.
- 4] The learned counsel appearing for the petitioner submits that, the petitioner is presently serving

as a Shikshan Sevak in respondent No.5 School. He has applied in pursuant to the advertisement issued on 11.03.2012 by the respondent Nos. 4 and 5. The petitioner is fully qualified, and therefore, after selection he is appointed as a Shikshan Sevak in the respondent No.5 School. It is submitted that, the respondent No. 3 Education Officer [Secondary], Zilla Parishad, Osmanabad has granted staff approval to the respondent No.5 School for the academic year 2009-10 to 2013-14 and sanctioned 14 posts of Assistant Teachers. As per the strength of the students, 9 Divisions sanctioned by the respondent No.3 in the respondent No.5 School by granting staff approvals. It is further submitted that, the Head Master of the respondent No.5 School has forwarded a proposal to the Education Officer [Secondary], Zilla Parishad, Osmanabad requesting for grant of approval to the post of Shikshan Sevak along with necessary / requisite documents on 28.08.2013. It is further submitted that, the respondent No. 3 Education Officer [Secondary], Zilla Parishad, Osmanabad, has rejected the proposal submitted by respondent No.5 dated 28.08.2013 by his order / letter dated 30.08.2013 by giving the reasons that, there is no post available for Open Category.

5] It is further submitted that, the respondent No.4 Management has given an appointment to the petitioner on the post of Shikshan Sevak in respondent No.5 School, by following due procedure under the law. The petitioner has submitted a representation for grant of approval to the appointment of Shikshan Sevak on 07.08.2014. It is further submitted that, the services of the petitioner continued by the respondent No.4 Management permanently without any gap till date. In respondent No.5 School, there are having 9 divisions, and the respondent No.3 sanctioned 14 posts of Assistant Teachers, for the academic Year 2012-13 as per staff approval, therefore, the respondent No.3 ought to have granted approval to the petitioner as Shikshan Sevak, since the appointment of the petitioner as Shikshan Sevak is on clear vacant post. The petitioner is continuously serving from the date of his initial appointment, but the payment of salary is not given to the petitioner due to not granting approval by the respondent No.3. Therefore, the learned counsel appearing for the petitioner submits that, Petition deserves to be allowed.

6] In pursuance to the notice issued to the respondents, one Shri Shivdas s/o. Tatya Nalawade has filed

affidavit-in-reply on behalf of respondent No.3. It is stated in para No.5 of the said reply, reads thus:

5. It is submitted that, as per the report of B.C.Cell, Aurangabad which is already annexed to the Writ Petition at Ex. E pae No. 32, in the Respondent no. 4 Sanstha there are backlog of ST-1, NT-01 and OBC-2 means there is backlog of 4 posts. I say that, the Respondent no.4 has appointed One SC candidate, two candidates are appointed from OBC category and one candidate is appointed from open category. I say that, there is backlog of 2 posts i.e. 1 of ST category and 1 of NT category. However, the Respondent no. 4 has appointed the candidate i.e. Present Petitioner from open category in spite of ST/NT category. Therefore the approval to the appointment of the Petitioner was rightly rejected by the Education Officer [Secondary], Zilla Parishad, Osmanabad.

The learned AGP appearing for the respondent – State submits that, since backlog of 2 posts is not filled in by the respondent No.5 School, therefore, the approval to the appointment of the petitioner is rightly rejected by the Education Officer. Therefore, Petition may be dismissed.

7] The respondent Nos. 4 and 5 have also filed affidavit-in-reply. For the purpose of deciding the present Writ Petition, statement made in para 6 of the reply about following reservation roster is relevant. Para 6 of the said reply, reads thus:

6] That, the contents of para no. 6 is admitted. It is true that, respondent no. 4 and 5 maintained reservation roster as per the procedure of 100 Bindu Namavali and the same is verified by the Education Officer and submitted his preliminary report to the Assistant Commissioner [MVK] Divisional Commissioner Office, Aurangabad by counting 14 post of Assistant Teacher as per the approved staffing pattern for academic year 2011-12. The 7 post was reserved for reservation and presently the 6 persons belongs to reservation category i.e. 2SC+2OBC +2VJNT and 6 persons from Open Category including the petitioner are serving. As per the said staffing pattern for academic year 2011-12 the 2 post still vacant. The present situation 12 post of Assistant Teachers are fill-up and out of them, 6 from reservation category is already fill-up and the said ratio is sufficient for reservation criteria. Therefore, the reasons given in the impugned order by the Education Officer [Secondary] Z.P. Osmanabad is incorrect and not given as per the record of the school.

8] The learned counsel appearing for the respondent Nos. 4 and 5 relying upon the affidavit in reply submit that, the rejection of the proposal of the petitioner is illegal and without considering the staffing pattern [Sanch Manyata and roaster], which is maintained by the respondent, and the appointment of the petitioner is on the vacant post.

9] We have considered the submissions of the learned counsel appearing for the petitioner, learned AGP for the respondent No.3, and the learned counsel appearing for the respondent Nos. 4 and 5, with their able assistance, perused the pleadings in the Petition, annexure thereto, reply filed by respondent No.3 and respondent Nos. 4 and 5. If the affidavit-in-reply filed by the respondent Nos. 4 and 5 is considered carefully, and in particular para 6 thereof, it is clear that, as many as 6 posts from the reserved categories are filled in by the respondent Nos. 4 and 5 management. It appears from the affidavit-in-reply filed by the respondent No.3 Education Officer that, the respondent No.3 has not perused the record maintained by the respondent Nos. 4 and 5, and also not considering the factual position in respect of filling in candidates from the reserved category by the respondent Nos. 4 and 5.

10] In the light of the discussion herein above, the impugned letter dated 30.08.2013 [Exh.G to the Petition] issued by the respondent No.3 Education Officer [Secondary], Zilla Parishad, Osmanabad, rejecting the approval to the petitioner as a Shikshan Sevak in respondent No.5 School, stands quashed and set aside. We direct the Respondent No.3 – The Education Officer [Secondary], Zilla Parishad, Osmanabad to reconsider the issue of approval to the post of Shikshan Sevak on which petitioner is working, as expeditiously as possible, preferably, on or before 5th May, 2015.

11] Writ Petition is partly allowed. Rule made absolute in above terms. Petition stands disposed of.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

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DDC