

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

WRIT PETITION NO.8017 OF 2013.

Varsha Laxmanrao Magar

- PETITIONER

VERSUS

The State of Maharashtra & Ors.

- RESPONDENTS

Mr. Pradeep Deshmukh, Advocate Petitioner;
Mr. GR Ingole, AGP for Respondent-State;
Mr. MC Swami, Adv.1 for Resp.No.2;
Mr. SG Rudrawar, Adv. For Resp.Nos. 3 and 4;
Mr. GK Kshirsagar, Adv. For Resp.No.5.

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

DATE : 25th March, 2015.

PER COURT:

1) Heard. This petition is filed with following
prayers, -

(A) The impugned order dated
23.4.2013 passed by the Education
officer (Primary) Zilla Parishad,
Aurangabad refusing to sanction
proposal of the petitioner for
absorption on seniority basis against
grant in aid post and sanctioning the
proposal of Respondent No.5 be quashed

and set aside.

(B) By issue writ of mandamus or any other appropriate writ or direction of like nature, the respondent No.2 be directed to sanction the proposal of the petitioner and absorb the petitioner against the post to which the grant in aid is available w.e.f. 3.4.2009 and grant all consequential monetary and other benefits within two months;

(C) The respondent No.3 and 4 be directed to pay the salary of the petitioner from 4.8.2003 to 3.4.2009 within two months and submit the salary bills from 4.4.2009 onwards to the Education Officer (Primary) Zilla Parishad, Aurangabad for its sanction within two months and the respondent No.2 be directed to release the arrears within one month by crediting it in the petitioner bank account."

2) It is the case of the petitioner that she is

working as Assistant Teacher in Ekta Primary School, Chikalthana, MIDC, Aurangabad w.e.f. 23.4.2013. It is the further case of the petitioner that the Education Officer (Primary) Zilla Parishad, Aurangabad declined to sanction proposal of the petitioner for absorption on seniority basis to grant in aid post from the current non grant post.

. It is the further case of the petitioner that the petitioner was appointed as a Shikshan Sevak by the respondent/management by order dated 31st July, 2003. Having been satisfied with the performance of the petitioner as Shikshan Sevak, the management, after completion of three years' by the petitioner, continued the petitioner as Assistant Teacher by passing appropriate resolution.

. According to the petitioner, the total posts of teaching staff sanctioned for the academic year 2002-2003, as per then prevailing norms, were, - 1 post of Headmaster; 1 post of Primary Graduate Teacher; and 6 posts of Trained Primary Teachers. Out of the total 8 sanctioned posts, 1 post of Head Master and 3 posts of Trained Teachers, are amenable to grant in aid policy of the State Government; whereas 1 post of Primary Trained Graduate teacher

and 3 posts of Trained Teachers are on non-grant basis.

. It is the further case of the petitioner that all the three teachers, who were senior to the petitioner, though were earlier appointed on the post, were not receiving grants in aid from the State Government. However, subsequently, upon sanction of four posts, the teachers, who are at Serial Nos. 1, 2 3, were appointed on the said posts, which are receiving grants in aid.

3) Learned Counsel appearing for the petitioner further submits that on the date, when the Government has sanctioned four posts on grant in aid basis, the petitioner, who was at serial No.4 in the seniority list, ought to have been absorbed on any one of four sanctioned posts. It is further submitted that the practice followed, while absorbing the teachers/employees on the sanctioned posts, a rule of seniority is to be followed and, therefore, since the Government has sanctioned four posts on grants in aid basis, the petitioner, who is at serial No.4, ought to have been absorbed on any one of four sanctioned posts, however, Respondent/management appointed

Respondent No.5 on one of four sanctioned posts, contrary to rule of seniority. It is further submitted that even before passing the resolution by the Respondent/management on 6.6.2009, resolving to appoint Respondent No.5, four posts were already sanctioned, and since the petitioner, who is at serial No.4 in seniority, ought to have been appointed on any one of four sanctioned posts.

4) Learned counsel for petitioner, in support of his contention that the posts, receiving grants in aid, are required to be filled in as per the seniority, placed reliance on the pronouncement of Division Bench of this Court in the case of Vidya Vikas Khandekar Vs. Bal Mandir Sanstha & Ors., reported in 1993 (2) Mh L.J.1467 and invited our attention to paragraph 3 thereof. Learned Counsel further submits that the resolution passed by the Respondent/management, based on which, appointment is given to Respondent No.5, was without seeking prior approval of the Education Officer1 (Primary) Zilla Parishad, Aurangabad. Therefore, according to learned Counsel for petitioner, the said resolution passed by the management itself was per se illegal as

no prior permission of Education Officer (Primary) was obtained by the Respondent/Management before appointment of Respondent No.5.

. Learned Counsel further, on the costs of repetitions, submits that great injustice has been caused to the petitioner by not absorbing her on any one of the four sanctioned posts, which are receiving grants in aid; and thereby the authorities have breached the rule of seniority. It is further submitted that the petitioner was appointed way back in the year 2003 and she served as such satisfactorily till 2009 and after four posts were sanctioned on grants in aid basis, Respondent No.5 is illegally appointed that too without securing prior approval of the Education Officer. Therefore, relying upon the pleadings in the petition; grounds taken therein, the counsel appearing for the petitioner submits that the petition may be allowed.

5) On the other hand, Learned Counsel appearing for the Respondent/management submits that since there was backlog, the management resolved to fill up the backlog. When such resolution was passed on 6.6.2009, backlog of two posts from the reserved

category was available and, therefore, Respondent no.5 was appointed on one of the posts receiving grants in aid, out of four sanctioned posts.

6) Learned Counsel appearing for Respondent No.5 invited our attention to Rule 9, sub-rule (7) of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (for short, Rules of 1981) and submits that the management was bound to follow the reservations, as provided under the said Rule 9(7) of the Rules of 1981. Therefore, the management has rightly passed the resolution and appointed Respondent No.5, so as to fill up the backlog. It is further submitted that Respondent No.5 is not only appointed as per the law, but the Education Officer has also granted approval to the appointment and since then, he is working as such. Therefore, counsel for Respondent no.5, submits that the petition is devoid of any substance and same may be dismissed.

7) Learned Counsel appearing for Education officer submits that though the petitioner is at serial No.4 in the seniority list, the

Respondent/management was bound to follow roster/statutory reservations and, therefore, the management did rightly resolve to fill up two posts from reserved category and accordingly, Respondent No.5 is rightly appointed so as to fill up the back log. Therefore, according to counsel appearing for the Respondent No.2- Education officer, the petition may be dismissed.

8) We have given careful consideration to the submissions advanced by learned Counsel for the parties and also perused the pleadings in the petition, grounds taken therein, annexures thereof, relevant rules and all other documentary evidence placed on record.

9) The fact that, the management is bound to fill up the posts from reserved category, as per the provision contained in sub-rule (7) of Rule 9 of the Rules of 1981, is not in dispute. The said sub-rule (7) of Rule 9 reads thus, -

“(7) The management shall reserve 52 per cent of the total number of posts of the teaching and non-teaching staff for the

persons belonging to the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows, namely, -

(a)	Scheduled Castes	13 percent;
(b)	Scheduled Tribes	07 percent;
(c)	De-Notified Tribes(A)	03 percent;
(d)	Nomadic Tribes (B)	2.5 percent;
(e)	Nomadic Tribes (C)	03 percent;
(f)	Nomadic Tribes (D)	02 percent;
(g)	Spl. Backward category	02 percent;
(h)	Other Backward Classes	19 percent;

52 percent.
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10) Upon careful perusal of contents of the resolution, which is placed on record at page 112 of the writ petition, it is abundantly clear that there were two posts from the reserved category, which were to be filled in till that date. There was existing backlog of two posts from the reserved category. We have also perused the documents at page Nos. 112 to 114 of the writ petition. There is a resolution passed by the management. Pursuant to the said resolution, Respondent No.5 is appointed on a post out of four sanctioned posts receiving grants in aid basis. It further appears that the Education Officer

has approved the appointment of Respondent No.5. On repeated query made to counsel for the petitioner, as to whether there is any legal provision so as to appreciate arguments of the counsel for petitioner that Rule of seniority should be followed when the Government sanctions the post on grant in aid basis. However, no such provision is brought to our notice . However, the counsel for petitioner placed reliance in the case of Vidya Vikas Khandekar (Supra) and submits that in the facts of that case, the Division Bench of this court has taken a view that Rule of seniority should be followed when the posts on grant in aid basis are made available.

11) Upon careful perusal of the said judgment, we find that the facts of that case are altogether different inasmuch as the Division Bench of this court was considering totally different fact situation. It appears from the facts of that case, that in order to deprive the concerned candidates from absorbing on a post receiving grants in aid, they were transferred. But, in the present case, the respondent/management was obliged to fill up backlog so as to give meaning to the statutory/constitutional

reservation. Therefore, viewed from any angle, in our considered opinion, prayer clauses (A) and (B) of the petition deserve no consideration. So far as prayer clause (C) is concerned, we direct Respondent No.2 - Education officer to hear the petitioner as also respondent/management and then take appropriate decision about the grievances of the petitioner as to non-payment of salary from the year 2003 till 2009. We do not express any opinion about the said point. It is left to the Education Officer to take appropriate decision thereon, after hearing all the concerned parties. The petition lacks merit and the same stands dismissed.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

bdv/

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