

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

WRIT PETITION NO. 2518 OF 2013

1. Shashikant S/o Gulchand Londhe
Age : 26 years, Occ : Service,
R/o Murud, Tq. & Dist. Latur.
2. Vilas S/o Vasantryao Kadam
Age : 35 years, Occ : Service,
R/o As above.

..PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through it's Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
2. The Director of Education (Primary),
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Primary),
Zilla Parishad, Latur,
Tq. & Dist. Latur.
5. Samaj Jagruti Shikshan Sanstha
Murud, Tq. & Dist. Latur
Through its Secretary.
6. Samaj Jagruti Primary School,
Murud, Tq. & Dist. Latur
Through its Head master.

..RESPONDENTS

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Advocate for Petitioners : Mr. V.D. Gunale
A.G.P. for Respondents/State : Mr. S.K. Kadam
Advocate for Respondent No.4 : Mr. P.R. Tandale
Advocate for Respondent Nos. 5 and 6 : Mr. S.V. Gundre

**WITH
WRIT PETITION NO. 8424 OF 2013**

Avinash S/o Vishnu Devane
Age : 32 years, Occ : Service (Now nil),
R/o At Post Borud, Tq. Devani,
Dist. Latur.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Director of Education (Primary),
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Chief Executive Officer,
Zilla Parishad, Latur.
5. The Education Officer (Primary),
Zilla Parishad, Latur,
6. Uday Mahila Bahu-Uddeshiya
Shikshan Prasarak Mandal,
Udgir, Dist. Latur
Through its Secretary
Smt. Manisha Manikrao Somwanshi
Age : 55 years, Occ : Social Worker,
R/o C/o Smt. Laxmibai Primary School,
Anand Nagar, Nanded Naka, Udgir,
Dist. Latur.
7. Smt. Laxmibai Primary School,
Anand Nagar, Nanded Naka,
Udgir, Dist. Latur
Through its Head master.

8. Samaj Jagruti Primary School,
Murud, Tq. & Dist. Latur
Through its Head master. ..RESPONDENTS

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Advocate for Petitioner : Mr. V.P. Golewar
A.G.P. for Respondents/State : Mr. S.K. Kadam
Advocate for Respondent No.6 : Mr. P.V. Barde
Advocate for Respondent No. 8 : Mr. V.D. Gunale
Advocate for Respondent nos. 4 and 5 : Mr. P.R. Tandale

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**CORAM : S.S. SHINDE &
A. M. BADAR, JJ.**

**RESERVED ON : 6th October, 2015
PRONOUNCED ON : 23rd October, 2015.**

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JUDGMENT (PER S.S.SHINDE, J.) :

Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, heard finally.

2. Writ Petition No. 2518/2013 takes exception to the impugned communication dated 27th July, 2012 issued by the Respondent No.4 i.e. Education Officer. There is further prayer seeking directions to the Respondents to grant approval/administration sanction to the post held by the petitioners in respondent no.6 – school since from their initial appointments, as per Government Resolution dated 1st April, 2011.

3. It appears that, the petitioners are working as peon and junior clerk in Respondent No.6 Samaj Jagruti Primary School run by Respondent No.5 Samaj Jagruti Shikshan Sanstha.

4. Writ Petition No. 8424/2013 is filed seeking directions to the Respondents to implement the order of absorption of the petitioner and release the payment of salary payable to the petitioner from the month of October, 2012 till date. It appears that, the Respondent Authorities directed the Headmaster Samaj Jagruti Primary school to absorb the petitioner by the impugned order.

5. It is the case of the petitioners in Writ Petition No. 2518/2013 that, their appointments are made in pursuant to the advertisement issued by Respondent Nos. 5 and 6 for the post of peon and junior clerk on non-grant basis. The petitioners being eligible and qualified to the posts of peon and junior clerk respectively, have been appointed by Respondent Nos. 5 and 6 and accordingly, petitioner no.1 was appointed by appointment order dated 21st September, 2005 and petitioner no.2 was appointed by appointment order dated 10th June, 2004. In spite of their continuous service from their appointments, they are not receiving salary and

also their posts have not been sanctioned or approved from the respondents. According to the petitioners, Respondent Nos. 5 and 6 are entitle for additional posts in view of the increase in strength of the students i.e. more than 500 and to that extent, even the Respondents conducted inspection and found Respondent No.6 school run by Respondent No.5 entitle for additional post of peon and clerk.

6. The learned counsel appearing for the petitioners invited our attention to Exhibit-B of the compilation of Writ Petition i.e. inspection carried out for the academic year 2012-2013 by the Education Extension Officer, Panchayat Samiti, Renapur and submits that, for the academic year 2004-2005, there were 511 students and for the academic year 2005-2006, there were 556 students. It is submitted that, the petitioners' appointments are in accordance with rules/procedure and since 2004-2005 the proposals were sent for sanction/approval, however, the Respondents did not take any steps and on the contrary directed Respondent No.6 to absorb Avinash Vishnu Devare, since he was declared surplus, who is petitioner in Writ Petition No. 8424 of 2013.

7. The learned counsel appearing for the petitioners further invited our attention to the pleadings and grounds taken in the Petition, the impugned communication and submits that, though it was within the powers of Education Officer (Primary), Zilla Parishad, Latur to sanction staffing pattern for the non-teaching staff i.e. clerk, peon and to that extent the proposal was forwarded for the period 2004-2005 to 2011-2012. However, the Education Officer rejected the same on the ground that, the sanction from the Government is necessary. The learned counsel submits that, the Government Resolution dated 26th March, 2002, which is referred in the impugned communication, nowhere states that, the Education Officer (Primary), Zilla Parishad, Latur is not competent authority to accord the sanction/approval to the staffing pattern for the year 2004-2005 to 2011-2012. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

8. The learned counsel appearing for the petitioner in Writ Petition No. 8424 of 2013 submits that, inspite of directions issued by the Respondents to the Respondent No.8 therein and though he was declared surplus, he is not absorbed in the said school and his salary is yet not paid by the Respondent - Education

Officer.

9. The learned A.G.P. appearing for the Respondent/State invited our attention to the affidavit in reply filed in Writ Petition No. 2518/2013 and submits that, the Petition may be rejected.

10. The learned counsel appearing for Respondent Nos. 4 and 5, relying upon the affidavit in replies filed in both the Petitions, made submission that, so far Writ Petition No. 2518 of 2013 is concerned, the petitioners therein were appointed on year to year basis without sanction/approval from the Respondent Authorities and therefore, the Petition may be rejected. In another Writ Petition No. 8424 of 2013, he submits that, the petitioner therein is declared surplus and directions are given to Respondent No.8 therein to absorb the petitioner and Respondent No.8 is supposed to adhere to the directions given by the Education Officer.

11. We have heard the learned counsel appearing for the petitioners, learned A.G.P. appearing for the Respondent/State and State Authorities and the learned counsel appearing for the Chief

Executive Officer, Zilla Parishad, Latur and the Education Officer (Primary). With their able assistance, we have perused the entire documents placed on record and the reasons assigned in the impugned order by the Education Officer (Primary), Zilla Parishad, Latur in Writ Petition No. 2518/2013. It appears that, Respondent No.6 i.e. Headmaster Samaj Jagruti Primary School, Murud sent the proposal for sanction of non-teaching staff i.e. clerk and peon on 29th March, 2012 for the academic year 2004-2005 to 2011-2012. However, the Education Officer (Primary) has shown his inability to grant sanction/approval to the posts, in addition to earlier staff approved on the ground that, in view of the Government Resolution dated 26th March, 2002, his office cannot grant sanction/approval and have to obtain sanction from the Government.

12. Upon careful perusal of the impugned communication, it is abundantly clear that, the Education Officer neither adverted to any specific clause of the said Government resolution and without assigning any reason observed that, no sanction/approval can be accorded for additional posts by his office. In fact, before taking such decision Education Officer ought to have given reasonable opportunity of hearing to respondent Nos. 5 and 6 in Writ Petition

No.2518 of 2013 and also to the petitioners and then ought to have taken decision. Apart from it, the said Authority ought to have considered the contentions of the petitioners that, they are appointed from the year 2004-2005 and till date they are working as clerk and peon, and therefore, the sanction for the additional posts of peon and clerk ought to have been given by the Education Officer since the strength of students has increased more than 500 in Respondent No.6 School from the year 2004-2005 onwards. It is also contention of the petitioners that, without considering the fact that, the petitioners are already working on the posts of clerk and peon, the Respondent - Education Officer directed the Headmaster of the Samaj Jagruti Primary School to absorb Avinash Vishnu Devane, the petitioner in Writ Petition No. 8424 of 2013.

13. Since the impugned communication is without adverting to the specific clause of the Government Resolution dated 26th March, 2002, which according to the Education Officer prohibits him from granting sanction/approval to the additional staff and said impugned communication is without hearing the concerned educational Institution and also the petitioners, in our opinion, impugned communication deserves to be quashed and set aside. It

was also necessary for the Education Officer to find out from the respondent -educational Institution before issuing directions for absorption of Avinash Vishnu Devane, who is declared as surplus, in Samaj Jagruti Primary School about the vacancy in the said school. However, it, prima facie, appears that, without such exercise, the Respondent - Education Officer has directed Respondent No.6 i.e. Headmaster Samaj Jagruti Primary School to absorb Avinash Vishnu Devane as a clerk.

14. In that view of the matter, the impugned communication stands quashed. Respondent -Education Officer (Primary), Zilla Parishad, Latur is directed to reconsider the proposal submitted by Respondent - Institution dated 29th March, 2012 in the light of the policy of the State Government and take decision after hearing the representative of the respondent - Institution, the petitioners and also the petitioner in Writ Petition No. 8424 of 2013. It is desirable to complete such exercise, as expeditiously as possible, however, in any case within three months from today. The Respondent - Education Officer to assign the detail reasons while passing further orders/taking decision on the proposal dated 29th March, 2012 and also the prayer of the petitioner in Writ

Petition No. 8424/2013 and communicate the said decision to the petitioners and the Respondent-Institution. Meantime, the Education Officer shall ensure that, the petitioner in Writ Petition No. 8424 of 2013 is paid unpaid salary.

15. The Petitions are allowed in part accordingly.

16. We have neither expressed any opinion on merits nor the contentions raised in these Petitions and it is left open to the Respondent - Education Officer (Primary), Zilla Parishad, Latur to take appropriate decision in accordance with the relevant rules and policy.

Sd/-
(**A. M. BADAR, J.)**

Sd/-
(**S.S. SHINDE, J.**)

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