

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION No. 189 OF 2015**

|                                                                                                              |     |             |
|--------------------------------------------------------------------------------------------------------------|-----|-------------|
| Dadasaheb Somdale Shikshan Prasarak<br>Mandal. Pandharpur                                                    | ... | Petitioner  |
| vs.                                                                                                          |     |             |
| The State of Maharashtra, through its<br>Secretary, Secondary and Higher<br>Secondary Education Dept. & Ors. | ... | Respondents |

Mr. Ajay A. Joshi, Advocate for the petitioner.  
Mr. C.P. Yadav, AGP for respondent nos. 1 to 4.  
Mr. B.K. Barve a/w. Mr. Sandeep Barve i/b. M/s. B.K. Barve & Co.,  
Advocate for respondent no. 5.

**CORAM : SMT. VASANTI A. NAIK &  
C.V. BHADANG, JJ.**  
**DATE : 25<sup>th</sup> February, 2015.**

**P.C.**

Heard.

By this Petition, the petitioner impugns the communication issued by the respondent no. 2, dated 8<sup>th</sup> April, 2014 so far as it directs that one post of the Head of the school should be reserved for the reserved category candidate.

The petitioner is a public trust, which runs three schools by name Vivek Vardhini Vidyalaya, Datta Vidya Mandir and Vivek Purv Parthamik Vidyalaya. The primary and secondary education is imparted in Vivek

Vardhini Vidyalaya and Datta Vidya Mandir whereas, Vivek Purv Parthamik Vidyalaya imparts education only to the primary section. The petitioner thus runs only two secondary schools and admittedly there are only two posts of Head of the said institution. By the Government Resolution dated 5<sup>th</sup> May, 2009, the Government has provided 33% reservation for the promotional posts including the posts of Headmaster with effect from 8<sup>th</sup> October, 2008. Though there are only two posts of Headmaster available in the two schools run by the petitioner-trust, by the impugned order, the respondent no. 2 directed the petitioner- trust to appoint a teacher from the reserved category on one of the posts of Headmaster. The order of the respondent no. 2 is challenged in the instant petition.

Inter alia, it is submitted on behalf of the petitioner that the respondent no. 2 could not have directed the petitioner to reserve one of the posts of the Headmaster for a reserved category candidate when there were only two posts of Headmaster and the reservation provided by the Government Resolution dated 5<sup>th</sup> May, 2009 is only 33%. According to the petitioner, the issue stands answered in favour of the petitioner by the Full Bench judgment reported in **(2007) 1 ALL MR 381**.

Mr. Yadav, the learned Assistant Government Pleader appearing on

behalf of the respondent no. 2 supported the order of the respondent no. 2. The learned Assistant Government Pleader, however, fairly admitted that the issue stands answered in favour of the petitioner in view of the judgment reported in **(2007) 1 ALL MR 381**.

The learned counsel for the respondent no. 5 also supported the order of the respondent no. 2 and submitted that the respondent no. 2 was justified in reserving one of the posts of Headmaster for the reserved category candidate. It is stated that if none of the posts are reserved for the reserved category candidates, great injustice would be caused to the respondent no. 5. The learned counsel relied on the judgments reported in **(2007) 1 MLJ 715, (2012) ALL SCR 1322, 2007 ALL SCR 91, 2013 (4) ALL MR 680 and 2011 ALL SCR 2329** to substantiate his submission.

On hearing the learned counsel for the parties, it appears that the respondent no. 2 was not justified in directing the petitioner-Management to reserve one of the posts of Headmaster for the reserved category candidate. Admittedly, there are only two posts of Headmaster in the schools run and administered by the petitioner-trust. The percentage of reservation as prescribed by the Government Resolution dated 5<sup>th</sup> May, 2009 is only 33%. In the aforesaid set of facts, a post could have been reserved for the reserved category candidate only if there were more

posts than two. It would be worthwhile to refer to the judgment referred in **(2007) 1 ALL MR 381** which squarely applies to the facts of this case. The judgments reported in **(2007) 1 MLJ 715**, **(2012) ALL SCR 1322**, **2007 ALL SCR 91**, **2013 (4) ALL MR 680** and **2011 ALL SCR 2329** and relied on by the counsel for the respondent no. 5 cannot come to the rescue of the respondent no. 5 for supporting the impugned order. The judgment reported in **(2007) 1 MLJ 715** stands impliedly overruled by the Full Bench judgment, reported in **(2007) 1 ALL MR 381**.

Hence, for the reasons aforesaid, the Writ Petition is allowed. The impugned communication, so far as it directs the reservation of one of the posts of Headmaster for the reserved category candidate is quashed and set aside.

Order accordingly. No costs.

**(C.V. BHADANG, J.)**

**(VASANTI A. NAIK, J.)**