

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 1981/2014.

Shashikant Madhaorao Irutkar and another **VERSUS** Chief Executive Officer, Z.P. Wardha & ors..

WRIT PETITION No. 1514/2014.

Bhagyashri Subhashrao Kadu **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

WRIT PETITION No. 3970/2014.

Vaishali Shankarrao Shende **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

WRIT PETITION No. 1024/2014.

Narendra Gangadhar Kadu **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

WRIT PETITION No. 1515/2014.

Anita Sudhir Chopade **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

WRIT PETITION No. 1516/2014.

Shailesh Rajabhau Raut **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

WRIT PETITION No. 1517/2014.

Jyoti Bhaurao Raut **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

WRIT PETITION No. 1518/2014.

Sandhya Pandharinath Wakekar **VERSUS** The Director, Maharashtra Prathamik Shikshan..& ors..

WRIT PETITION No. 1528/2014.

Jahan Aara S. Shaikh **VERSUS** The Director, Maharashtra Prathamik Shikshan...& ors..

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI
& A. P. BHANGALE, JJ.

DATED : FEBRUARY 10, 2015.

Heard Shri A.Z. Jibhkate and Shri
Gawande, holding for Shri Y.P. Kaslikar, learned

Counsel for petitioners, Shri P.D. Meghe, learned Counsel for Zilla Parishad, Wardha, Shri D.M. Kale and Shri P.B. Patil, learned Counsel for Zilla Parishad, Amravati and Shri S. Shingane, learned Counsel for Municipal Corporation, Amravati and Shri J.Y. Ghurde, learned Counsel appearing for private party/respondent in some of the petitions.

Petitioners serving as Resource Persons are found surplus and, therefore, as per the government policy have been transferred to another Zilla Parishad/Local Authority. The scheme has been looked into by the Division Bench of this Court at Aurangabad, while deciding Writ Petition No. 4747/2013, on 06.08.2013. There is no challenge to validity of the Scheme before us. Petitioners before us are making individual grievance. Most of them have reported at the transferred place and are working there without prejudice to their right to prosecute these petitions.

Question is – How seniority list of Resource persons/experts under Sarva Shiksha Abhiyan, should

be worked out by the concerned Zilla Parishad to determine the surplus one to forward them to such other local Authorities/Z.P. ? Problem arise as Zilla Parishads prepared a select list on the same day and has also issued appointment orders to all, on very same date. The guidelines are contained in communication dated 30.05.2013, forwarded by the Maharashtra Council for Primary Education to all the Zilla Parishads and Municipal Corporations. Relevant clause i.e., clause no.3 therein reads "*For absorption, district wise seniority and category wise reservation should be considered*".

The Zilla Parishads/Local Authorities submit that as all incumbents have joined on the strength of some appointment order, seniority list has been worked out on the basis of their merit i.e. their position in the select list. Petitioners do not assail this action. After finding out the posts available for retention, the category wise strength has been worked out and as per that strength, the persons belonging to open category and other reserved categories have been

retained. Others who could not be accommodated, have been declared surplus and sent to other Zilla Parishads.

Shri Jibhkate, learned counsel appearing for petitioner in Writ Petition No. 1981/2014, however, points out that while preparing the list of such persons for retention in O.B.C. Category, injustice has been done to the petitioner. He invites attention to one name i.e. name of Shri Ravindra Bawankule, to submit that he is a candidate from O.B.C. Category, who has secured less marks than the petitioner, but, has been shown in Scheduled tribe category for retention. He further submits that because of his good performance, petitioner belonging to O.B.C. Category, secured placement in open category, however, while undertaking the exercise of retention, as petitioner could not fit in the number of posts available for open category, he has been declared surplus by treating him as open category candidate only. He argues that as petitioner belongs to O.B.C. Category basically he ought to have been treated as person belonging to

O.B.C. Category and a person who has secured less marks than the petitioner in O.B.C. Category should have been declared surplus.

The contention is sought to be substantiated by inviting attention to the treatment extended to another candidate by name Ku. Vidhya Shripatrao Waghmare.

Shri Meghe, learned Counsel appearing for respondent Zilla Parishad, Wardha submits that Vidhya Waghmare has been given concession because her child is about 80% disabled. He adds that no concession has been given to said lady because of her caste.

The basis used by the Zilla Parishads for preparing seniority list cannot be said to be incorrect. The scheme for absorption is without any fault. As such, if there is any individual grievance, the same cannot be gone into here for the first time.

However, while preparing seniority list of reserved category persons, merit inter-se again cannot be ignored. Merely because a particular person

belonging to a reserved category secured more marks and therefore, stood accommodated against an open category post, that by itself does not render him a open category candidate for all purposes and for all times to come.

While preparing seniority list for the purpose of retention, very exercise on lines as placed before this Court by respective Zilla Parishads need to be followed. Hence, from amongst the candidates working as resource persons/experts, depending upon their position either in open category or then in reserved category, the seniority list needs to be prepared. If a person belonging to reserved category can be accommodated because of his merit in open category, he needs to be accommodated in open category only. However, if he cannot be accommodated, he ought to be the first person to be considered while preparing seniority list of reserved category persons.

Thus, petitioner in Writ Petition No.1981/2014 belonging to O.B.C. Category, but,

selected in open category ought to have been considered first while preparing seniority list of O.B.C. Category. That obviously has not been done. In this situation, we direct the respondent Zilla Parishad, Wardha to consider his entitlement for retention in the light of observations made above.

With these directions and with liberty to all petitioners to raise their individual grievance by filing suitable representation, if they find that in their matter, the procedure regulating determination of seniority has not been properly adhered to, we dispose of all the petitions. If petitioners make such representation within a period of three weeks from today, the concerned Chief Executive Officer or the Municipal Commissioner shall look into it in accordance with the observations made by this Court supra, within a further period of three weeks and issue necessary orders.

Accordingly with these directions, we dispose of the Writ Petitions. No cost.

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