

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

WRIT PETITION No. 2139/2014.

Progressive Education Society, Hinganghat and 5 others.

VERSUS-

The State of Maharashtra and another.

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 : JANUARY 22, 2015.

Heard Shri Anand Parchure, learned
Counsel for the petitioners and Shri D.M. Kale, learned
A.G.P. for respondents.

It is not in dispute that before proceeding
further with the recruitment, petitioner no.1 applied to
respondent no.2 and said authority has on 12.04.2012
given permission to the petitioner no.1 to advertise the
post to fill in the vacancies.

Accordingly interviews were held on 02.05.2012 and recruitment has been done. When the proposal for granting approval to persons so recruited were forwarded, that proposal has been rejected on the ground that on 02.05.2012, a ban on recruitment has been imposed. These new recruited persons are petitioner nos. 2 to 6 before this Court.

Shri Parchure, learned counsel invited our attention to the fact that recruitment process was carried out in pursuance of an advertisement issued prior to 02.05.2012, and after getting no objection from the department. Thus, according to him, department after verification that there was no surplus employee to be forwarded to the petitioner no.1 establishment, granted that permission.

In the alternative and without prejudice to this, he also submits that the government resolution dated 02.05.2012, has been modified subsequently and some relaxation have been granted on 06.05.2013 and lastly on 12.08.2014. He also states that the said Government resolutions issued subsequently do not

permit the respondents to reject the proposal of petitioner.

Shri Kale, learned A.G.P. is relying upon the reply-affidavit filed and also Government Resolution dated 02.05.2012. According to him, as ban was imposed, approval could not be processed and granted.

With the assistance of respective counsel appearing for the parties, we have perused the papers. Respondent no.2 has on 12.04.2012 given permission to petitioner no.1 to issue advertisement and to fill in total 5 vacant posts. Petitioner no.1 is required to obtain such permission from respondent no.2 only to enable the respondent no.2 to find out whether any surplus teachers/staff is available with him and that surplus teachers/staff can be forwarded to the establishment of petitioner. Respondent no.2 has given permission and it implies that there was no such surplus teacher or staff. Having given permission and having thus permitted 3rd party to secure appointment, respondents cannot turn back and refuse to grant

approval.

However, we also find that in order dated 12.04.2012, giving no objection to petitioner, vide clause no.5, the respondent no.2 has mentioned that if any surplus teacher is forwarded for absorption to petitioner no.1, the petitioner no.1 would be under obligation to allow him to join and to terminate services of newly recruited employees. It is also mentioned that while granting appointment to such new recruit, this condition (such condition) must be expressly incorporated.

We fail to understand how the respondent no.2 can issue such directions. On one hand when he is obliged to verify whether there is any surplus teacher, and if there is no such surplus teacher, then only to grant such permission, on the other hand, he cannot ask the employer to incorporate such a condition which militates with his finding. This stipulation in communication dated 12.04.2012, speaks for itself. It shows either dereliction of duties by the respondent no.2 or some other motive.

The respondent nos. 1 and 2 shall therefore, consider the proposal forwarded by the petitioner no.1 ignoring the ban which has come into force w.e.f. 02.05.2012. Respondent no.1 shall also hold an enquiry into the matter and submit a report about circumstances and situation in which the respondent no.2 gave no objection on 12.04.2012 to petitioner no.1. Such enquiry shall be completed within a period of six weeks from today.

This Court has already ordered creation of website to introduce transparency into the exercise of grant of such permission or no objection certificate and available surplus teachers. The orders were passed to curb illegalities and to save public revenue. Hence on the strength of this order, Registry to register a separate Public Interest Litigation and compliance with this order shall be reported by the respondent no.1 in that Public Interest Litigation within a period of 8 weeks from today.

Subject to this, Writ Petition is partly allowed and disposed of. No costs.

JUDGE

JUDGE

Rgd