

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

WRIT PETITION No. 5244/2014.

Mahatama Fuley Education Society, Chinchal and another.

-VERSUS-

The Education Officer (Primary), Zilla Parishad, Bhandara and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ.**

DATE : APRIL 22, 2015.

Heard Shri H.A. Deshpande, learned Counsel for the petitioners, Shri H.N. Verma, learned counsel for respondent no.1, Shri A.A. Naik, learned Counsel for respondent no.2 and Shri V.N. Morande, learned Counsel for respondent no.3.

2. Challenge is to order dated 04.03.2014, by which the Education Officer has refused to grant approval to the appointment of respondent no.2.

3. Apart from other contentions, Shri Deshpande, learned counsel submits that the appointment has been made after following due

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procedure i.e. after previous permission and the fact mentioned in the impugned order that roaster has not been certified, is not correct. He further submits that post has been filled in through open category candidate and hence, observations that other three posts are filled in through OBC category, are irrelevant.

4. Shri Naik, learned counsel appearing for respondent no.2 submits that there was proper advertisement and the post was declared to be in open category. Respondent no.2 applied and has been selected. He submits that stand of education officer before this Court reveals that on account of subsequent events, the approval is being denied.

5. Shri Morande, learned counsel for respondent no.3 submits that respondent no.3 is admittedly a teacher rendered surplus and has been absorbed in the petitioner nos. 1 and 2 School. He states that because of absorption of said respondent there is no vacancy to accommodate respondent no.2.

6. During arguments, our attention has been invited to roaster certified by the Assistant Commissioner on 20.01.2011. It reflects position as on

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31.12.2010. One post in Scheduled Tribe, one post for V.J. are shown to be not filled in accordingly. It is further remarked that though there was no backlog or vacancy in OBC, excess OBC candidates have been filled in. Though Shri Deshpande, has relied upon the documents to urge that roaster was duly certified, according to him, position noted therein is not entirely correct. He has invited our attention to the rejoinder filed by the petitioners to point out how the four sanctioned posts of teachers have been filled in from time to time from 28.04.2005 onwards. According to him, these developments show that there was a post vacant to accommodate open category candidate and accordingly respondent no.2 has been appointed. He has submitted that respondent no.1 cannot force respondent no.3 in this situation on petitioners.

7. Shri Verma, learned counsel has relied upon a note which is appearing below the order of approval dated 07.10.2008, issued in favour of Shri Bhupesh Bisen. He points out that there was backlog for SC category and approval to Shri Bisen was given on condition of fulfilling the same. He has also invited our attention to reply filed on record to urge

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that after verification of strength of students on 30.09.2011, the teachers were rendered surplus and therefore, approval to appointment of respondent no.2 could not be given.

8. During hearing we find that respondent no.3, who claims to have joined in February, 2014 is working without salary. The management has pointed out that because of this dispute, salary bills have not been submitted. It is the case of management that as respondent no.2 is appointed there is no work load for respondent no.3.

9. The fact that management approached the department before issuing advertisement and thereafter advertisement came to be published on 28.06.2011, is not in dispute. Selection of respondent no.2 in pursuance thereof is also not in dispute.

10. In this background, when reasons recorded in the impugned order dated 04.03.2014, are looked into, the statement of fact that roaster was not verified, appears to be incorrect. The other fact that three posts were filled in through OBC category candidates appears to be irrelevant. The statement that respondent no.2 has been appointed in OBC category

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appears to be again incorrect.

11. It is in addition mentioned that in the year 2012-13 and 2013-14 teachers rendered surplus were sent to the petitioners for absorption and those teachers were not permitted to join. How this subsequent events can be used to deny the approval to otherwise valid prior recruitment is the moot question. That question has not been answered in present matter. The stand of department that after verification of strength of students on 30.09.2011, teachers were rendered surplus, cannot be a fact relevant to consider the approval given to the petitioners to fill in vacancies in June, 2011.

12. However, the management itself has not accepted the note on roaster verification dated 20.01.2011 to be entirely correct.

13. In this situation, we direct the respondent no.1 to peruse all records and thereafter to take fresh decision on proposal submitted by the petitioners for grant of approval to respondent no.2. Parties shall appear before the respondent no.1 for said purpose on 15.05.2015 and said Authority shall complete the exercise within a period of next four weeks. The

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entitlement of respondent no.3 to continue shall depend on the outcome of that exercise.

14. At this stage, Shri Morande, learned counsel submits that without prejudice to this exercise, as respondent no.3 was already declared as surplus and was being paid salary accordingly by the department, her arrears should be directed to be cleared. Shri Verma, learned counsel for respondent no.1 is opposing this request. However, as respondent no.3 is entitled to payment of salary, whether absorbed or not, we direct the respondent no.1 to release said salary to her within a period of four weeks from today. If the absorption is found correct, the said salary shall then be appropriated towards salary grants payable to the petitioner no.2.

15. In view of above, Writ Petition is partly allowed and disposed of. No costs.

JUDGE

JUDGE

Rgd.