

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 1593 OF 2015**

SUDARSHAN RAMKISAN RAUT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Kakade Amol N.

AGP for Respondent/State : Mr. V.S. Badakh

Advocate for Respondent nos. 3 and 4 :

Mr.M.R. Khutwad

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CORAM : S.S. SHINDE & SANGITRAO S. PATIL, JJ.**Dated: April 04, 2016**

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PER COURT :-

Heard the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the Respondent/State.

2. Being aggrieved by the impugned communication dated 15th March, 2014, addressed to Respondent No.3 by the Education Officer (Secondary), Zilla Parishad, Ahmednagar, this Petition is filed by the petitioner. It appears that the petitioner's father was working as an assistant teacher in Respondent No. 4 – School run by Respondent No.3 Institution. During the course of

employment, the father of the petitioner died. The petitioner filed application for appointment on compassionate ground. The Education Officer forwarded the said application to the Respondent – Institution to consider it sympathetically. Thereafter, the petitioner by order dated 30th September, 2013 has been appointed on the post of assistant teacher. However, approval to his appointment has been rejected.

3. In pursuance of the notices issued to the respondents, Respondent No.2 has filed the affidavit in reply. Though in the impugned communication the reason assigned by the respondent is that there was ban for appointment till the backlog of the appointment of the candidates from reserved category is fulfilled, the Institution should not go ahead with the appointment, the petitioner has been appointed during such ban. The another reason assigned by the respondent No.3 is that, the petitioner does not fulfill the criteria of passing TET examination.

4. We have given careful consideration to the submissions advanced by the learned counsel appearing for the parties. With their

able assistance, we have perused the pleadings in the Petition, annexures thereto and the reply filed by Respondent No.2.

5. Upon careful perusal of the letter written by the Education Officer, Zilla Parishad, Ahmednagar to Respondent No.4 — Headmaster dated 2nd July, 2013, it appears that the application filed by the petitioner for appointment on compassionate ground was directed to be considered, keeping in view the instructions issued by the State Government from time to time, and it was further observed that, the decision so taken on said application be communicated by the institution to the petitioner. It further appears that, pursuant to such direction by the Education Officer to the Institution, the institution has appointed the petitioner on 30th September, 2013. In the facts of this case, when the Education Officer knew that the petitioner is seeking appointment on compassionate ground, at the relevant time i.e. on 2nd July, 2013 itself, the petitioner should have been told by the Education Officer that his application for compassionate ground cannot be considered, since there is ban on recruitment of the

employees in view of the instructions issued by the Government. However, instead of doing it, the Education Officer proceeded to forward said application of the petitioner to the concerned institution and the institution upon considering the eligibility of the petitioner, appointed the petitioner on the said post. Therefore, in the peculiar facts of this case, the approval should not have been refused on the ground that the appointment of the petitioner was during the period, when the Government imposed ban for recruitment. Respondent No.2 has also taken an additional ground in the affidavit in reply that the petitioner does not fulfill the criteria of passing TET examination. In that respect, as earlier contended by the learned counsel appearing for the petitioner that the Government Resolution issued by the School Education and Sports Department, Mantralaya Mumbai dated 20th January, 2016, Exhibit P-2 (page 70) specifically mentions that if the candidate seeking appointment on compassionate ground, fulfills the qualification necessary for the post, such candidate who filed his application for appointment on compassionate ground is exempted from passing TET examination.

6. In the light of discussion in foregoing paragraphs, in our opinion, Respondent No.2 – Education Officer was not justified in rejecting the approval to the services of the petitioner on the ground that there was ban and secondly, the petitioner has not passed TET examination.

7. In that view of the matter, the impugned communication stands quashed and set aside. Respondent No.3 – Education Officer is directed to reconsider the said proposal for approval and take appropriate decision on the said proposal, on its own merits, as expeditiously as possible, and preferably within six weeks from today, without raising same grounds, which have been raised in the earlier communication or in the affidavit in reply.

8. The Petition stands disposed of in above terms.

9. The parties to act upon an authenticated copy of this order.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)