

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2381 OF 2016

Prashant s/o. Ramchandra Khandale,
Age 30 Years, Occ : Service
As Assistant Teacher in
Kai. Sow. Badambai Dhanraj Seth
Gandhi Vidyalaya, Tq. Newasa,
District Ahmednagar

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
- 2] The Education Officer [Secondary],
Zilla Parishad, Ahmednagar
- 3] The Secretary,
Taluka Vidya Prasarak Mandal,
Newasa Taluka Newasa
District Ahmednagar
- 4] The Head Master,
Kai. Sow Badambai Dhanraj Seth
Vidyalaya, Newasa, Taluka Newasa
District Ahmednagar

RESPONDENTS

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Mr. A.N.Kakade, Advocate for petitioner
Mr. V.S.Badakh, AGP for Respondent Nos.1 & 2
Mr. D.R.Markad, Advocate for Respondent Nos.3
and 4.

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**CORAM: S.S.SHINDE &
V.K.JADHAV, JJ.**

Reserved on : 22.04.2016
Pronounced on : 02.05.2016

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

Brief facts in a nutshell leading for filing the Petition are as under:

3] The petitioner possessed the qualification of B.Sc., M.Sc., B.Ed. with Math and Science as a Special subject. Respondent no.3 trust has issued an advertisement on 11.11.2014 in daily news paper 'Saptahik Suvidha News' calling applications of candidates of having qualification of B.Sc. B.Ed.

4] The petitioner appeared before the

Selection Committee and came to be appointed as a Shikshan Sevak, vide appointment order dated 1st December, 2014. The school is running classes from 5th to 10th standard and the petitioner has been allotted work of teaching from 7th to 10th standard. One Assistant Teacher namely Mr. Bhange Ashok Sadashiv has retired from services on 30th May, 2013, and one post was vacant, and hence, the management has rightly issued the advertisement in the year 2014. On 22.11.2004, the Caste Scrutiny Committee, Divisional Social Welfare Department, Nashik has issued a validity certificate to the petitioner, denoting he belongs to OBC category [Hindu Kumbhar]. On 23.10.2013, a letter is issued by the Education Officer to the Deputy Director of Education, Pune Division, Pune, requesting permission to the institutions having vacancies of teaching staff in English / Math and Science Subject.

On 24.01.2014, the Deputy Director of Education, Pune, has recommended the proposal of respondent no. 3 institution for filling one post of Science subject and there was recommendation by the Education Officer.

5] The Education Officer has issued a letter on 24th December, 2014, denoting the absorption of surplus teacher in Ahmednagar District is completed. Due to ban of new recruitment, the Education Department has not accepted the proposal of the petitioner and the same was thereafter accepted on 01.02.2016. On 16.02.2016, the Education Officer rejected the proposal of the petitioner on the ground that (i) permission not sought from the office at the time of appointment, (ii) appointment process not carried out in view of the Government Resolution dated 06.02.2012, and (iii) proposal not submitted in camp.

6] The learned counsel appearing for the petitioner submits that the respondent authority has given recommendation to the Government to allow the respondent management to fill up one post from Science subject and the management has issued advertisement as well as the selection process is carried out, hence, the order under challenge deserves to be quashed.

7] On the other hand, the learned AGP appearing for respondent – State, relying upon the affidavit-in-reply filed by respondent no.2 submits that, before advertising the post, prior permission of the Education Officer was not taken. The procedure for recruitment was not followed as per the Government Resolution dated 6th February, 2012. The said proposal for approval is not submitted in camp. He also invited our attention to the averments in the

affidavit-in-reply and submits that, the Petition may be rejected.

8] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned AGP appearing for respondent – State. With their able assistance, perused the pleadings and the grounds taken in the Petition, annexures thereto and the reply filed by respondent no.2 and annexures thereto, and we are of the opinion that, the impugned order cannot sustain for the reasons set out hereinbelow.

9] Upon perusal of the copies of documents placed on record, it appears that, the Deputy Director, Pune Region, Pune granted permission to the various schools including the school wherein the petitioner is serving, to fill in the post from the Maths, English and Science subject. It

appears that keeping in view the need of teachers for the said subject exemption from the ban on new recruitment was granted. The petitioner has placed on record the copy of *inter se* communication between the Deputy Director of Education, Pune Region, Pune-1 to the Director of Education [Secondary & Higher Secondary], Pune, dated 24th January, 2014, wherein it is stated that the Education Officer, Zilla Parishad, Ahmednagar has submitted a proposal for filling the vacant post from the various institutions for permission / approval of the Deputy Director of Education, Pune.

10] Upon perusal of the contents of the said letter, it appears that, the Education Officer, Zilla Parishad, Ahmednagar, sought permission and forwarded the proposal of the concerned institutions for appointment of 10 teachers in Science subject, 8 teachers in English subject and 12 teachers in

Mathematics subject from Ahmednagar District. The name of the institution, wherein the petitioner is serving, is shown at serial no.8. It further appears that the requirement of one teacher in Science subject from OBC category was recommended by the Education Officer and also by the Deputy Director of Education. Therefore, it cannot be said that the concerned institution did not seek prior permission of the Education Officer, on the contrary the documents placed on record at Exhibit-G Page-33 clearly shows that the proposal with recommendation for filling in the post of Science subject from OBC category was forwarded to the Deputy Director of Education and he forwarded the same to the Director of Education, Pune. Upon perusal of the documents placed on record, it appears that, the advertisement was issued to fill in the post of teacher in Science subject and after due selection process, the appointment

order is issued in favour of petitioner on 1st December, 2014, which is at Exhibit-C Page-21 of the compilation of the Writ Petition.

11] Therefore, upon considering the copies of the documents placed on record, grounds stated in the impugned communication by the Education Officer that the appointment of the petitioner is without seeking permission of the office of the Education Officer, and the said appointment is not in accordance with the Government Resolution dated 6th February, 2012 cannot sustain.

12] Therefore, the reasons assigned by the Education Officer in the impugned communication dated 16th February, 2016, addressed to respondent no.4, cannot sustain. Accordingly, the impugned communication is quashed and set aside. The Education Officer [Secondary], Zilla Parishad, Ahmednagar is directed to consider the proposal for

approval to the appointment of the petitioner afresh. The respondent Education Officer to take decision as expeditiously as possible, however, on or before 30th May, 2016 and communicate the said decision to respondent no.4. We make it clear that the Education Officer shall not raise the same objections, which are raised in the impugned communication while considering the proposal afresh.

13] The Petition is partly allowed. Rule is made absolute on the above terms. The petition stands disposed of accordingly.

Sd/-

[V.K.JADHAV]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE