

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2557 OF 2015

1 Pimpalner Education Society,
Pimpalner, Tq. Sakri,
District Dhule, through its
Secretary, Shantaram s/o Tarachand
Sonwane, age: 58 years,
Occ: Service, R/o Pimpalner,
Tq. Sakri, District Dhule.

2 Karmveer A. M. Patil,
Secondary & Higher Secondary School,
Pimpalner, Tq. Sakri, District Dhule,
through its Head Master.

Petitioners

Versus

1 The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.

2 Assistant Commissioner,
Backward Class Cell,
Nashik Region, Nashik.

3 Deputy Director (Education),
Nashik Region, Nashik.

4 Education Officer (Secondary),
Zilla Parishad, Dhule.

Respondents

Mr.Mahesh S. Deshmukh, advocate for petitioners
Mrs.A.V.Gondhalekar, A.G.P. for Respondents.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

Date : 16th March, 2016

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Petitioner is praying for issuance of directions to quash and set aside the order dated 22.06.2010, passed by Respondent No.2 – Assistant Commissioner, Backward Class Cell, Nasik, approving the roster of teaching and non teaching staff in relation to the schools operated by petitioner no.1 – Institution and to hold that the said order is contrary to the prescription provided under Rule 9(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

3 Petitioner-educational Institution operates several schools in Dhule district. The Assistant Commissioner, Backward Class Cell, Nasik, has prepared and approved roster in relation to reservation of posts, on 22.06.2010. According to the petitioners, prescription of reservation by the Assistant Commissioner is not in conformity with the provisions of Rule 9(7) of the Rules of 1981. The Assistant Commissioner has provided for 8% of posts in favour of Scheduled Castes, 22% in favour of Scheduled Tribes and 9% in favour of Other Backward Class category, whereas, Rule 9(7) of the Rules of 1981 provides that prescription of reservation for Scheduled Castes category shall be 13%, for Scheduled Tribes: 7% and for OBC category, it shall be 19%. Petitioner contends that order passed by the Assistant Commissioner is contrary to the provisions of Rules.

4 An affidavit has been presented on behalf of the concerned Respondent wherein reliance has been placed on the

Government Resolution dated 05.03.2015, which provides for higher percentage of reservation in favour of Scheduled Tribes, since the area, within which petitioner is operating, comprises of majority of population belonging to Scheduled Tribes category.

5 It is to be noted that unless there is prescription in the Rules providing for such higher percentage of reservation in favour of Scheduled Tribes category, it would be impermissible for the authorities to act upon and observe executive instructions issued by the State. The issue raised in the matter is no more *res integra* in view of the judgment delivered by the Division Bench of this Court in the matter of **Nishad Sadashiv Pawar & others Vs. Dnyanasadhana College & others**, reported in 2005 (4) All MR 101. The Division Bench has observed in paragraphs no.3 & 4, as below:

“3 It appears that the authority has proceeded on the footing that what has to be applied as Government G.R. In the matter of reservations. The G.R. Is nothing but administrative instructions which will be applicable, if there is no primary or secondary legislation in force. In the instant case, under the M.E.P.S. Act, rules have been framed. Rule 9(7) provides that the Management shall reserve 34% of the total number of posts of the teaching as well as non-teaching staff for the members of S.C., S.T. and Backward communities. In other words it is clear that rules in force being subordinate legislation are applicable. The issue is whether the G.R.s will prevail over the rules. G.R.s are issued pursuant to the executive powers of the State as provided by Article 162 of the Constitution of India. The rules are framed pursuant to delegation of powers by the Legislature on the

delegate. The rule making power is subject to Legislative control. Rules are subordinate legislation whereas administrative instructions are not. Administrative instructions cannot contravene the rules. See Nanjundappa R.N. Vs. Themmiiah T., (1972) 1 SCC 409. The rules therefore, will prevail over the G.R.

4 The authorities under the M.E.P.S. Act to follow strictly Rule 9(7) of M.E.P.S. Rules in so far as recruitment to the posts governed by the M.E.P.S. Act and rules. The G.Rs. As issued by the Government from time to time in the exercise of its administrative powers under Article 162 of the Constitution of India would be inapplicable to appointments in schools and junior colleges.

Consequently if the contentions raised in ground {c} are considered, the Petitioners are right and the Petitioners can be posted against the posts presently held by them. Considering that and as the issue has not been answered, petition will have to be partly allowed.

6 The Respondent authority i.e. Assistant Commissioner, Backward Class Cell, shall have to approve the roster having due regard to provisions of Rule 9 (7) of the Rules of 1981 and shall not have to place reliance on the Government instructions which are in the nature of administrative directions issued under Article 162 of the Constitution of India and such directions would be inapplicable on the face of specific provisions made in the Rules of 1981.

7 Writ Petition, therefore, deserves to be allowed and same is accordingly allowed. The impugned order dated 22.06.2010 issued by the Assistant Commissioner, Backward Class

Cell, Nashik Region, Nashik, is quashed and set aside and the concerned authority is directed to prepare and approve the roster in accordance with provisions of Rule 9(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The Respondent-authority shall consider the proposal for approval forwarded by the petitioner-Institution, strictly in accordance with the provisions of Rules of 1981, expeditiously.

8 Rule is accordingly made absolute. There shall be no order as to costs.

P.R.BORA
JUDGE

adb/wp255715

R.M.BORDE
JUDGE