

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

43 WRIT PETITION NO.3254 OF 2015

WITH WP/3255/2015

JAI HIND EDUCATION TRUST, DHULE AND ANOTHER

VERSUS

STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Patil Shrikant S.

Mr. UH Bhogale, AGP for Respondents:1 To 3.

Mr.Rahul Pawar, Adv. For Resp.No.4.

**CORAM : S.S.SHINDE &
P.R.BORA,JJ.**

DATE : 1st March, 2016.

PER COURT :

1) In spite of giving sufficient opportunities to the respondent/Education officer, no reply is filed by the Education Officer. We deprecate the conduct of the Education Officer in creating hindrance in not allowing this Court to dispose of the petition at the earliest though notices were issued to the respondents way back in the month of April 2015.

2) By filing these petitions the petitioners have taken exception to the order passed by Respondent No.4 dated 29.1.2015 and 16.2.2015, thereby refusing to grant approval to the services of the appointees.

3) Learned Counsel appearing for the petitioners invited our attention to page 25 and 17 of the compilation of the respective writ petitions and submits that, the Head Master has submitted the proposal to the Education Officer (Primary) Zilla Parishad, Dhule by his forwarding letter dated 25.7.2013 and 17.5.2013, seeking approval to the services of the concerned teachers, who were appointed in pursuance of the advertisement issued in that regard. It appears that, along with the said proposal, various documents were annexed, which include, - letter of appointment; resolution of the management; qualification possessed by the concerned teachers; copy of the advertisement; copy of letter issued calling the candidates for appointment; list of the candidates, who participated in the selection process; and copy of the roaster with list of the employees.

4) It is the submission of the learned Counsel appearing for the petitioners that in spite of communicating the decision on the said proposal, the Education Officer, by letter dated 16.2.2015, informed to the Head Master that the appointments are made in breach of the provisions of Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The provision of Rule 9 of MEPS Rules, 1981 has not been adhered to. The management has not absorbed the surplus teachers as directed by the Education Officer. He further submits that the said decision of the Education Officer indirectly amounts to refusal of approval to the services of those teachers who were appointed by the respondent/management from the reserved category so as to fill in the backlog.

5) Learned Counsel invited our attention to Government Resolution dated 15th October, 2010 issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai, wherein provision is made not to grant approval to the appointments made by private unaided/aided primary schools in case surplus teachers are absorbed

in place of the candidates belonging to reserved category. According to learned Counsel for the petitioners, in case the candidates belonging to reserved category are not appointed, so as to fill in the backlog or to fill in the posts as per the roster approved by the concerned authority, penalty is provided. Therefore, the appointments of those teachers/employees were pursuant to permission granted by the Deputy Director of Education by advertising the said posts and after following the due procedure. It is further submitted that with sole object to fill in the posts from the candidates belonging to reserved category, the posts were advertised and filled in in accordance with the relevant rules and after adherence to the procedure established. Therefore, he submits that the impugned communication/ order passed by the Education officer, insisting the petitioner to absorb the surplus teachers, and in substance; refusing the approval to the appointments of those teachers, deserves to be quashed and set aside by further directing the Education officer to grant approval to the appointments of those teachers.

6) On the other hand, the learned counsel for the respondent/Education Officer submits that, under the procedure, the prior approval or intimation to the Education Officer was necessary. However, in the present case, the Deputy Director of Education, Nasik region, Nasik, has granted permission to fill in the posts. However, that permission was subject to absorption of the surplus teachers for the academic year 2012-2013.

7) We have heard the learned Counsel appearing for the parties. With their able assistance, perused the pleadings, annexures thereto and Circular dated 15th October, 2014 issued by the Government of Maharashtra, and we are of the opinion that in the facts of the present case, Respondent No.4 - Education Officer should not have raised the issue of absorption of the surplus teachers in view of the fact that the Deputy Director of Education, who is a higher authority of Respondent No.4, and who granted prior permission to fill in two posts, pursuant to which, the said posts are duly filled in from the candidates belonging to reserved category so as to fill in the backlog.

8) Upon careful perusal of the Annexure-B page 19 of compilation of the writ petition, it is abundantly clear that the Deputy Director of Education, Nasik Region, Nasik has granted permission to advertise the posts subject to certain conditions, which are stated in the said letter dated 25th September, 2012. Condition No.7 of the said letter is about filling in posts in order to fill up the backlog and complete the roster. There is also a condition to absorb the surplus teachers declared surplus in the year 2012-2013.

9) Sub-rule(7) of Rule 9 of The Maharashtra Employees of Private Schools (Conditions of Service) rules, 1981 (for short, The MEPS Rules), reads thus, -

"(7) The management shall reserve 52 per cent of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows, namely, :-

(a) Scheduled Castes	13 per cent;
(b) Scheduled Tribes	7 per cent;
(c) De-notified Tribes (A)	3 per cent;
(d) Nomadic Tribes (B)	2.5per cent;
(e) Nomadic Tribes (C)	3 per cent;
(f) Nomadic Tribes (D)	2 per cent;
(g) Special Backward Category	2 per cent;
(h) Other Backward Classes	19 per cent.

52 per cent

10) Upon perusal of the provision contained in sub-rule (7) of Rule 9 of the MEPS Rules, it is abundantly clear that the petitioners were under statutory obligation to fill in 2.5% posts from NT (B) category. So far as OBC category is concerned, 19% reservation is provided under the said provision. Therefore, if these posts were to be filled in, it was statutory obligation cast on the management to adhere to said statutory provisions and appoint the candidates from the reserved categories. Therefore, in the peculiar facts of this case, when the management was under statutory obligation in view of sub-rule (7) of Rule 9 of MEPS Rules, 1981, contrary to the mandate of the said provision, the Education Officer ought not to have insisted for absorption of surplus teachers. As rightly submitted by learned Counsel for the petitioner, in case if said provision is not adhered to, penalty is provided. In that view of the matter, in the peculiar facts of this case, keeping in view the permission granted by the Deputy Director of Education to advertise the posts and in view of aforesaid sub-rule of the MEPS Rules and the fact that one candidate is appointed from NT(A) category and another is appointed from OBC category

so as to fill in the backlog, the impugned communication/order stands quashed and set aside. Respondent No.4 is directed to grant approval to the services of the appointees, viz. Bharati Liladhar Patil and Deepanjali Sadashiv Chaudhary without raising a ground that there is no adherence to the provision of Section 5(1) of the MEPS Act and the petitioner has not adhered to the directions to absorb the surplus teachers, however, subject to fulfillment of other procedural formalities, as expeditiously as possible and preferably within a period of eight weeks from today and communicate such decision to the petitioner.

11) For the reasons stated above, both the petitions are disposed of.

. Parties to act on authenticated copy of this order.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

bdv/