

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6083 OF 2016

Shital s/o. Achyutrao Gaikwad
Age 32 years, Occ. Service as Junior Clerk,
R/o. Shripatrao Bhosle Secondary
and Higher School, Osmanabad
Dist. Osmanabad.

.. Petitioner

Versus

- 1] The State of Maharashtra,
through the Secretary,
Primary Education and Sports Department,
Mantralaya, Mumbai.
- 2] The Avvar Secretary,
Primary Education and Sports Department,
Mantralaya, Mumbai.
- 3] The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

.. Respondents.

. . .

Mr. P.R. Katneshwarkar, Advocate h/f. Mr. Vikram S. Undre,
Mr. V.M. Kagne, AGP for respondent Nos. 1 to 3.

**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.**

DATE : 14TH SEPTEMBER, 2016.

JUDGMENT [PER R.M. BORDE, J] :-

- 1] Heard. Rule. Rule made returnable forthwith. With the consent
of parties, taken up for final disposal.

2] Approval to the appointment of the petitioner as a Clerk in a private aided school accorded by the Education Officer on 2nd February, 2016 for a period of 3 years effective from 26th September, 2012 has been revoked/set aside by the Under Secretary, School Education and Sports Department, Government of Maharashtra by communication dated 3rd May, 2016. The petitioner has assailed the said order. Apart from the competency of the Under Secretary to set aside the order, even on consideration of the merits, the order impugned in this petition is not sustainable. The reason recorded in the order dated 3rd May, 2016 is failure of the institution to secure prior permission of the Education Officer before making the appointment of the petitioner. It is recorded in the order that the institution ought to have secured prior permission of the Education Officer before publishing the advertisement. The object of securing prior approval of the Education Officer is to ensure accommodation of the surplus employee, if any. It has been specifically reported by the Education Officer, Zilla Parishad, Oamsnabad by communication dated 11th January, 2016 to the Under Secretary, Government of Maharashtra, that in the Osmanabad District, during the relevant period no surplus employee from the clerical cadre was available for accommodation in any other private school as per the policy prescribed by the State Government on vide Government Resolution dated 2nd May, 2012. Since there was no surplus employee available for accommodation in the District at the relevant time, no prejudice was caused to anybody in making appointment of the petitioner. The relevant rule quoted in the impugned order i.e. Section 5(1) of the

Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act, 1977 does not prescribe requirement of securing prior approval of the Education Officer before making appointment, however, responsibility is cast upon the management to ensure from the Education Officer, as to whether there is any suitable person available in the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being made available, the management shall appoint that person in such vacancy.

3] In the instant matter, as recorded above, the Education Officer has communicated that there is no person available for accommodation in the Osmanabad District for filling up the vacancy and as such, there is no infraction of Section 5 (1) of the MEPS Act, 1977.

4] For the reasons recorded above, the order impugned in the petition passed by the Under Secretary, School Education and Sports Department, Government of Maharashtra dated 3rd May, 2016 deserves to be quashed and set aside and same is accordingly quashed and set aside.

5] Rule is made absolute in terms specified above. Writ petition is disposed of. No costs.

[K.K.SONAWANE]
JUDGE

[R.M. BORDE]
JUDGE

grt/-