

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6608/2015

Prakash S/o Janku Ighe,
Age:59 years, Occ.Retired,
R/o Takali Dhokeshwar,Tq.Parner,
Dist.Ahmednagar.

..Petitioner..

Versus

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

2) The Education Officer (Sec.)
Zilla Parishad, Ahmednagar.

3) The Head Master,
New English School, Wasunde,
Tq.Parner, Dist.Ahmednagar.

...Respondents..

.....

Shri C.K. Shinde, Advocate for petitioner.
Smt.S.S. Raut, AGP for respondent nos.1 & 2.
Respondent no.3 served.

.....

**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 13.10.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

- 2 -

1] Heard learned counsel appearing for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final disposal at this stage.

2] Learned counsel for the petitioner states that the petitioner was promoted as Head Master in January, 2014. On attaining the age of superannuation, the petitioner retired on 31.5.2015 while discharging his functions as Head Master. The proposal was submitted seeking approval to the appointment of petitioner as Head Master. The same was rejected. The petitioner approached this Court by filing Writ Petition No.3539/2014. This Court disposed of the writ petition vide judgment and order dated 12.1.2015 setting aside the order of the Education Officer rejecting the proposal seeking approval to the appointment of petitioner as Head Master and directed the Education Officer to reconsider the same. Again, the said proposal is rejected stating that there is a backlog of scheduled tribe category.

3] Learned counsel for the petitioner further submits that at the relevant time when the petitioner was promoted, there was no eligible candidate from ST

- 3 -

category to be promoted as Head Master. The management had also given an undertaking to the Education Officer specifically stating that there are two persons who are undergoing B.Ed. course and the moment they complete it, the backlog would be filled in from ST category. According to the learned counsel, according to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, p;reference is required to be given to in-service candidates for being promoted as Head Master. The petitioner belongs to NTB category. There is one post of Head Master for NTB category, even as per the Roster approved by the B.C.Cell.

4] According to the learned counsel for the petitioner, one Mr.Madhe, who belongs to ST category has been promoted as Head Master before retirement of the petitioner. Even the said aspect has not been considered by the authority in its correct perspective. The learned counsel submits that at the relevant time, there was no candidate qualified and eligible to be appointed as Head Master from the ST category, the case of the petitioner is required to be considered and the petitioner is

- 4 -

required to be paid salary as that of Head Master.

5] Learned counsel for the petitioner further submits that even as per Rule 9(10)(b) of the MEPS Rules, the petitioner is entitled to be appointed as Head Master.

6] Learned AGP submits that the backlog from ST category was never filled in. There was no impediment for the management to fill in the said post from ST category even by advertisement. The same was not done. The Education Officer has considered the Roster approved by the BC Cell. Said Roster specifically shows the backlog of the post of Head Master from ST category. No error has been committed by the Education Officer while rejecting the proposal.

7] We have considered the submissions canvassed by the learned counsel appearing for the parties.

8] From the Roster approved by the B.C. Cell, it transpires that one post of Head Master from ST category was vacant. The management runs eight schools as per the petitioner. On the relevant date when the petitioner was promoted as Head Master, there was not a single Assistant Teacher qualified and eligible to be promoted as Head

- 5 -

Master from the ST category. The management has also given an undertaking that two of the Assistant Teachers are presently undergoing B.Ed. course and once then complete it, the post from ST category would be filled in.

9] It is also stated that one Mr.Madhe belongs to ST category and before the petitioner attained the age of superannuation, he was already promoted as Head Master. This itself shows that the backlog of ST category candidate for the post of Head Master on promotion of Mr.Madhe did not exist. The said post was filled in. AT least from the date Mr.Madhe was appointed as Head Master, the case of the petitioner should have been considered. It appears that the said fact was not brought to the notice of the Education Officer and the Education Officer only on the ground that the backlog of ST category exists, has rejected the proposal seeking approval to the appointment of the petitioner as Head Master. Rule 9(10)(b) of the MEPS Rules also states that if it is not possible to fill in the post of Head or Assistant Head, for which a vacancy is reserved for a person belonging to the caste and tribes specified in

- 6 -

Clause (a), the post may be filled in by promoting a candidate from other remaining category in the order specified in Clause (a). In Clause (a), after the post meant for scheduled tribe category, the post is meant for de-notified tribe and nomadic tribe (B). The said aspect also could have been considered by the Education Officer while passing the impugned order.

10] Though the respondent no.3 is served, none appears for the respondent no.3 to clarify as to when Mr.Madhe was appointed as Head Master belonging to ST category. However, all these aspects were not before the Education Officer while the proposal is rejected.

11] Considering the above, the impugned order is quashed and set aside. The Education Officer (Secondary), Zilla Parishad, Ahmednagar, shall reconsider the proposal and also shall consider the subsequent developments of filling in the post of Head Master from the ST category and shall pass orders afresh. The petitioner shall bring all these facts to the notice of the Education Officer and shall appear before the Education Officer on 27.10.2016. The Education Officer shall thereafter within a period of three months take

- 7 -

decision on the said proposal afresh considering all the
aforesaid aspects of the matter. Rule is made absolute
in the aforesaid terms. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)