

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

WRIT PETITION NO.10052 OF 2015

Prakash Vyankat Durunde,
Age 24 years, Occ. Service,
r/o. Tandulwadi, Tq. Paranda,
Dist.Osmanabad

..Petitioner

Vs.

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

2. The Head Master,
Shri Sant Dnyaneshwar
Bahuddeshiya Prashala,
Tandulwadi, Tq. Paranda,
Osmanabad

3. The Secretary,
Shri Sant Dnyaneshwar
Shikshan Prasarak Mandal,
Tandulwadi, Tq. Paranda,
Dist. Osmanabad

4. The Education Officer,
Zilla Parishad, Osmanabad

..Respondents

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Mr.D.R.Adhav, Advocate for petitioner

Mr.A.V.Deshmukh, AGP for respondent no.1 and 4

Mr.S.V.Suryawanshi, Advocate i/b. Mr.K.S.Bhore,
Advocate for respondent nos.2 and 3

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : JUNE 28, 2016**

ORAL JUDGMENT (Per S.S. Shinde, J.) :

Heard the learned Counsel appearing for the petitioner, the learned AGP appearing for respondent nos.1 and 4 and the learned Counsel appearing for respondent nos.2 and 3.

2. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally.

3. The learned Counsel for the petitioner submits that the proposal for approval to the appointment of the petitioner to the post of Junior Clerk has been rejected by the Education Officer, on the ground that no prior permission to advertise the said post was obtained by the respondent – Management and as the process of absorption of the surplus teachers was in progress.

4. The learned Counsel appearing for the petitioner invites our attention to the contentions in the letter written by the respondent – Management to the Education Officer on 28.09.2011 bearing Outward No.79/2011-12. It appears that the said letter was received in the Inward Section of the Office of the Education Officer (Secondary), Zilla Parishad, Osmanabad on 29.09.2011. The learned Counsel for the petitioner submits that the reasons assigned in the impugned interse communication between the respondent – Management and the Education Officer, cannot sustain.

5. The learned AGP for the respondents, relying on the reply of respondent nos.1 and 2, submits that the reasons assigned by the Education Officer in the impugned communication, are in consonance with the record maintained by the Office of the Education Officer and therefore, this Court may not entertain this Writ Petition.

6. The learned Counsel appearing for the respondent – Management submits that the appointment of the petitioner was made after following the due procedure as contemplated in the Maharashtra Employees of Private Schools, Act and the Rules and therefore, this Writ Petition deserves to be rejected.

7. We have given careful consideration to the submissions of the learned Counsel appearing for the petitioner, the learned AGP for respondent nos.1 and 4 and the learned Counsel appearing for respondent nos.2 and 3. With their able assistance, perused the pleadings in the petition, annexures thereto and the replies filed on behalf of the respondents.

8. Upon careful perusal of the letter dated 28.09.2011 (Exhibit 'R-1') written by the

respondent - Management to the Education Officer, it appears that the respondent - Management had sought permission of the Education Officer to advertise the said post. Further, the process to advertise the said post was initiated in the year 2011 and the same was completed in February, 2012 by conduction interviews of the candidates. Therefore, the ban imposed by the State Government by Government Resolution dated 02.05.2012, issued by the School Education and Sports Department, Government of Maharashtra, would not be applicable to the facts in the present petition.

9. In that view of the matter, the reasons assigned by the Education Officer in the impugned communication, being contrary to the record and therefore, the same is quashed and set aside.

10. Respondent no.4 - Education Officer is directed to reconsider the proposal for approval

to the appointment of the petitioner to the post of Junior Clerk, as expeditiously as possible, however, within a period of four weeks from today and take a decision on the said proposal without raising the grounds/reasons, which are assigned in the impugned communication.

11. The Writ Petition stands allowed to the above extent. Rule made absolute accordingly.

12. The parties to act on authenticated copies of this order.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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