

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9613 OF 2014

Santosh s/o Machindar Kamble
Age: 27 Yrs., occu. Nil
R/o In front of Rukmini Garden,
Bhiku Seth's Wada, Jalna,
District Jalna. = **PETITIONER**

VERSUS

- 1) The Education Officer (Primary)
Zilla Parishad, Jalna.
- 2) The President,
Shri Jalna Gujrati Samaj Society
Jalna.
- 3) The Secretary,
Shri Jalna Gujrati Samaj Society
Jalna.
- 4) The Head Master,
C.T.M.K. Gujrati Vidyalaya,
Jalna.
- 5) Dipak s/o Govindrao Kayande,
Age: 30 yrs., occu. Service,
R/o C/o Headmaster, C.T.M.K.
Gujrati Vidyalaya, Jalna. = **RESPONDENTS**

Mr. Kiran M.Nagarkar, Advocate for Petitioner;

Mr. UH Bhogle, AGP for State;

Mr.Sunil B.Kakde, Adv. For Resp.Nos. 2 to 4;

Shri P.B.Patil, Adv. For Resp.No.1 (Absent)

Shri Pradeep B.Salunke, Adv. For Resp.No.5 (Absent)

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 21st June, 2016.

DATE OF PRONOUNCING JUDGMENT: 14th July, 2016.

JUDGMENT:

1) Heard finally with the consent of the learned Counsel appearing for the respective parties.

2) The present petition is filed against the Judgment and Order dated 30th August, 2014 passed by the School Tribunal, Aurangabad in Appeal No.1/2014. The petitioner had filed the aforesaid appeal challenging the legality and validity of appointment order dated 1.9.2011 issued in favour of Respondent No.5 with further relief of issuance of appointment in his favour in place of Respondent No.5. The School Tribunal has dismissed the aforesaid appeal filed by the petitioner.

3) In CTMK Gujrathi Vidyalaya, Jalna (Respondent No.4), one post of Shikshan Sevak was

to be filled in. An advertisement was, therefore, published on 27.7.2011 in Daily Lokmat inviting qualified eligible candidates to attend the interview with original educational qualification certificates on 6th August, 2011. Along with the other candidates, the present petitioner had also attended the said interview. In the process of recruitment so conducted, Respondent No.5 was selected by the school management and was accordingly appointed on the post of Shikshan Sevak, vide appointment order dated 1.9.2011 for the period of three years i.e. from 2.9.2011 to 1.9.2014.

4) It is the grievance of the present petitioner that no proper recruitment procedure was followed by the respondent management while making appointment of Respondent No.5 on the post of Shikshan Sewak. It was his contention that the selection of Respondent No.5 was determined by the management and only a farce of taking interview was created on 6.8.2011 by taking

interviews for a minute or two for every candidate and the recruitment process was shown to have been completed. According to the petitioner, since he had secured 69.05% marks in D.Ed. examination comparing to 46.50% marks obtained by Respondent No.5, the petitioner must have been selected in place of Respondent No.5. It was the further contention of the petitioner that he belongs to backward class and also falls in the category of disabled persons and as such, preference must have been given to him while making the appointment by the respondent management.

5) The petitioner had, therefore, approached the Grievance Committee, which was existing at the relevant time, making the grievance about appointment of Respondent No.5 in disregard of the procedure and without considering the merit of the candidate. In the meanwhile, the Grievance Committees were abolished and the matters pending with the

Grievance Committees were directed to be referred to the School Tribunal for adjudication. Accordingly, the grievance raised by the petitioner was also referred to the School Tribunal at Aurangabad and was converted into an appeal bearing Appeal No. 526/2011.

6) The contentions raised by the petitioner in the appeal were strongly resisted by the Respondent management as well as Respondent No.5, whose appointment was challenged by the petitioner. According to the school management, proper procedure was followed in making appointment of Respondent No.5. The allegations made by the petitioner were denied by the school management. The school management had contended that in the interviews conducted of the candidates, who appeared in pursuance of advertisement published by the school management in Daily Lokmat, Respondent No.5 secured highest marks and hence was selected and accordingly appointed on the post of Shikshan Sevak. The

allegation made by the petitioner that in a minute or two the interviews were held of the willing candidates was denied by the school management. The learned School Tribunal on its assessment of the oral and documentary evidence brought before it, did not find any substance in the objections raised by the petitioner and hence dismissed the appeal vide the impugned order.

7) Shri Nagarkar, Learned Counsel appearing for the petitioner criticized the impugned judgment on various grounds. The learned Counsel submitted that the finding recorded in the impugned judgment that the appeal so filed by the present petitioner under Section 9 of MEPS Act, 1977 was not maintainable, is erroneous. The learned Counsel further submitted that after the Grievance Committees were abolished, the cases pending before the Grievance Committees were directed to be transferred to the School Tribunal having jurisdiction for further adjudication. In support of the said contention, the learned

Counsel relied upon the judgment of the Hon'ble Apex Court in the case of Secretary, Sh. A.P.D. Jain Pathshala and Ors. Vs. Shivaji Bhagwat More and Ors. - 2011 (0) BCI 225. The learned Counsel further submitted that the School Tribunal has failed in appreciating the objection raised by the present petitioner that the interviews conducted by the school management were not in accordance with the prescribed procedure and that the entire recruitment process was faulty and hence liable to be quashed and set aside. The learned Counsel further submitted that the School Tribunal had also failed in appreciating that the interviews of around 40 candidates could not have been completed within a span of one day and it was thus evident that conducting of the interviews was a camouflage and the management had already take a decision to select and appoint Respondent no.5, despite the fact that he has secured only 46% marks in D.Ed. examination. The learned Counsel, therefore, prayed for setting aside the impugned judgment

and order and consequently prayed for quashment of appointment order issued in favour of Respondent No.5 with further relief that the petitioner be appointed on the said post in place of Respondent No.5.

8) Shri Kakade, learned Counsel appearing for respondent school management opposed the submissions advanced on behalf of the petitioner. The learned Counsel supported the impugned order. The learned Counsel, referring to the documents filed on record, submitted that the recruitment process conducted by the respondent management was transparent and impartial. The learned Counsel submitted that there were several candidates, who have secured more marks in D.Ed. examination than the the petitioner; however, they were not selected since the performance of Respondent No.5 in the interview was better and satisfactory than the said candidates. The learned Counsel submitted that the marks secured in D.Ed. examination, was not the only factor to

be considered in making appointment on the post of Shikshan Sevak. The overall performance of the candidates was judged in the interviews and since the performance of Respondent no.5 was more satisfactory and better amongst all the candidates, he was selected and appointed. The learned Counsel, therefore, prayed for dismissal of the petition.

9) After having considered the submissions made on behalf of the respective parties and on perusal of the impugned judgment as well as the documents placed on record by the parties, it does not appear to me that any case is made out by the petitioner so as to cause interference in the impugned Judgment and Order.

10) As stated above, it is the main grievance of the petitioner that no proper procedure has been followed in giving appointment to Respondent no.5. It was argued by the Learned Counsel appearing for the petitioner that

the procedure laid down under Section 5 of the MEPS Act, was not followed and as such, the appointment of Respondent No.5 made in violation of the said provision is per se illegal. The Learned Counsel appearing for the petitioner however could not bring to my notice as to which is the prescribed procedure and how it was violated. Section 5 of the MEPS Act provides that the management shall, as soon as possible, fill in the manner prescribed every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy or that Respondent No.5 is not qualified to be appointed on the said post. It is not the case of the petitioner that there was no vacancy. It was sought to be canvassed by learned Counsel that the selection could not have been made only on the basis of interview, but a written test was also required to be conducted and the marks obtained in D.Ed. examination must have been given weightage while making the appointment. The learned Counsel for petitioner however could

not bring to my notice any such provision requiring to conduct a written test in making such appointment. The learned Counsel also could not bring to my notice any such provision or guideline to the effect that selection of Shikshan Sevak is to be made on the basis of marks secured by the said candidate in D.Ed. examination.

11) From the material on record, it is evident that there was an open offer for the willing and eligible candidates to appear for the interview with necessary documents, showing their qualifications and eligibility. The material on record further shows that accordingly, the candidates so appeared for interview were interviewed by the school management and their performance was assessed under three heads and Respondent No.5, who secured highest marks in the said interview, was ultimately selected and consequently appointed on the post of Shikshan Sevak. Though it is the allegation of the

petitioner that the candidates were interviewed only for a minute or two, the said allegation is denied by the respondent management. This Court may not enter into the said controversy. The material on record shows that the performance of all the candidates was assessed in the interview on about four aspects and accordingly, marks were assigned. The assessment so made in the interview evinces that the performance of the petitioner in the interview was not satisfactory and he could only secure 6 (six) marks out of 30 (thirty) marks; whereas the performance of Respondent No.5 in the interview was found to be best amongst all the candidates and he has secured 26 marks out of 30. It was the right of the management to have an objective assessment of the candidates to be selected for appointment to the post of Shikshan Sevak in their institution. In such circumstances, it does not appear to me that there is any substance in the allegation made by the petitioner that no proper procedure was followed while making appointment of

Respondent No.5.

12) It is further significant to note that there were 28 candidates amongst 40 candidates so appeared for the interview on 6.8.2011, who had secured more marks than the petitioner in D.Ed. examination. The material on record further shows that in the interviews 38 candidates have secured more marks than the petitioner. In the circumstances, even otherwise no right can be said to have accrued in favour of the petitioner to challenge the appointment of respondent No.5 and to seek appointment in his place.

13) Further it was sought to be canvassed that the petitioner belongs to backward class and also belongs to the category of disabled persons and hence was required to be given preference in the questioned appointment. This contention must also be rejected for the reason that nothing is brought on record showing that the questioned post was reserved for the persons belonging to

backward class or for the persons with disability. The respondents have placed on record the approval granted to the appointment of Respondent No.5. The letter of approval does not in any way indicate that the appointment of Respondent No.5 was made against the reserved vacancy and that the same is approved subject to filling of the said vacancy by recruiting a person belonging to backward class.

14) One more objection was raised by the petitioner that Respondent No.4 school is not a minority school. To buttress the said contention, the petitioner has relied upon the letter dated 14.10.2013 received to him by the said School which contains an information that the minority status has been awarded to the respondent institution on 16.1.1995 and that after 14th May, 2002, no orders have been passed in this regard. However, merely on the basis of the aforesaid document or on the basis of one Circular dated 10.6.2002 filed on record, no such

conclusion can be arrived at that Respondent No.2 does not possess the minority status. Moreover, it is not understood as to why the issue of minority is raised by the petitioner since in the appointment of Respondent No.5, there is no relevance whether the respondent 4 – school possesses the minority status or not.

15) The judgment relied upon by the petitioner in the case of Dayaram Dagdoba Mhaske Vs. The State of Maharashtra and Ors. - 2012 (0) BCI 177, may also not be of any help to take cause of the petitioner further since the facts involved in the said matter were altogether different.

16) After having thoroughly considered the material on record, it does not appear to me that the School Tribunal has committed any error in dismissing the appeal filed by the present petitioner. However, it is to be noted that the negative finding recorded by the Tribunal on the

point of maintainability of the appeal filed by the petitioner, cannot be sustained in view of the judgment of the Hon'ble Supreme Court in the case of Secretary, Sh.A.P.D. Jain Pathshala and Ors. (cited supra). The finding so recorded hence deserves to be quashed and set aside and is accordingly set aside. However, since on merits, no case is made out by the petitioner, the ultimate conclusion drawn by the School Tribunal which has resulted in dismissal of the appeal do not require any interference. The writ petition being devoid of any merits stands dismissed. However, in the circumstances of the case, no order as to costs.

Sd/-
(P.R.BORA)
JUDGE

bdv/

fldr 7.7.2016