

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 11868 OF 2015****&****WRIT PETITION NO.11869 OF 2015**

Gajanan s/o Valmik Chavan,
age 29 years, occu. Service,
r/o c/o F.M. Lalwani Secondary School,
Betawad, Tq. Shindkheda,
Dist. Dhule.

...PETITIONER.**VERSUS**

1. The State of Maharashtra
through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai 400032.

2. The State of Maharashtra
through its Secretary,
General Administration Department,
Mantralaya, Mumbai-400032.

3. The Zilla Parishad,
Dhule,
through its Chief Executive Officer.

4. The Education Officer (Secondary),
Zilla Parishad, Dhule.

5. Janta Shikshan Prasarak Sanstha,
Betawad, Tq. Shindkheda, Dist. Dhule,
through its President -
Shri Ashok S/o Shriram Gujar,
age Major, Occu. Social Work and Agril.,

r/on Janta Shikshan Prasarak Sanstha,
Betwada, Tq. Shindkheda, Dist. Dhule.

6. Head Master
Shri F.M. Lalwani Secondary School,
Betawad, Tq. Shindkheda,
Dist. Dhule.

...RESPONDENTS.

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Advocate for Petitioner : Mr.Talekar S.B.
AGP for Respondents: Mr.D.R. Kale.
Advocate for Respondents 5 & 6: Mr.Deshmukh N. E.

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AND

WRIT PETITION NO.11869 OF 2015

Santosh s/o Shivaji Valvi,
age 31 years, Occu. Service,
r/o c/o F.M. Lalwani Secondary School,
Betawad,
Tq. Shindkheda, Dist. Dhule.

..PETITIONER.

VERSUS

1. The State of Maharashtra
through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai 400032.

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through its Secretary,
General Administration Department,
Mantralaya, Mumbai-400032.

3. The Zilla Parishad,
Dhule,
through its Chief Executive Officer.

4. The Education Officer (Secondary),
Zilla Parishad, Dhule.

5. Janta Shikshan Prasarak Sanstha,
Betawad, Tq. Shindkheda, Dist. Dhule,

through its President -
 Shri Ashok S/o Shriram Gujar,
 age Major, Occu. Social Work and Agril.,
 r/on Janta Shikshan Prasarak Sanstha,
 Betwada, Tq. Shindkheda, Dist. Dhule.

6. Head Master
 Shri F.M. Lalwani Secondary School,
 Betawad, Tq. Shindkheda,
 Dist. Dhule.

...RESPONDENTS.

...

Advocate for Petitioner : Mr.Talekar S.B.
 AGP for Respondents: Mr.S.B. Yawalkar.
 Advocate for Respondents 5 & 6: Mr.Deshmukh N. E.

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

Dated: March 03, 2016.

ORAL JUDGMENT: [Per SHINDE, J]

1. These petitions have been filed, being aggrieved by orders of the respondent No.4 – Education Officer (Secondary), Zilla Parishad, Dhule refusing approval to the appointments of the petitioners as Shikshan Sevak. There are letters / orders passed by the respondent No.4 expressing inability to grant approval to the appointment of the petitioners on the grounds which are mentioned in those letters.

2. The learned Counsel for the petitioners invited our attention to the letter written by the respondent No.4 dated 21st December, 2012 and submits that, before the posts were advertised, permission from the Education Officer was sought; however, there was no response from the office of the respondent No.4 and the management wanted to fill in the posts from the reserved category candidates, respondent management proceeded to advertise the posts on 29th December, 2012. He submits that, the fact that permission of the Education Officer was sought by letter dated 21st December, 2012 is not in dispute. He further submits that, all the posts of Shikshan Sevak were advertised for various reserved categories. Two posts were advertised for Scheduled Tribe Category and third post for the V.J.N.T. Category. It is submitted that, in all 27 applications were received in pursuant to the advertisement and after adhering to the procedure, the petitioners were selected and appointment letters were issued in their favour. After appointments of the petitioner and other two candidates from reserved category, proposal was sent to the respondent No.4 for

approval. However, the respondent No.4 in his letter dated 24.11.2013 addressed to the respondents No.5 and 6 pointing out six deficiencies / requirements at the end of management. Out of 6 deficiencies, four deficiencies were cured and the proposal was re-submitted to respondent No.4. He further submits that, by another letter, respondent No.4 communicated to the respondents No.5 and 6 that, approval to the appointment of the petitioners is rejected on the ground that though, during the period when the petitioners were appointed, there was general ban to go ahead with the recruitment in view of the fact that surplus teachers were required to be absorbed, the respondent No.6 went ahead with the recruitment process and appointed the petitioners and other three candidates; and second reason assigned was that, no prior permission was taken by the respondent No.6 from the respondent No.4. Learned Counsel for the petitioners submits that, both the grounds are not sustainable inasmuch as, there is no denial to the fact that, respondent No.6 had written letter to the respondent No.4 to allow the respondent No.6 to

fill in the posts from reserved category so as to fill in the backlog of those posts. He further invited our attention to the Government Resolution dated 10th April, 2012 (Exh.L, page 49 to the compilation of the petitions) and submits that, by said resolution, time to fill in those posts from the reserved category was extended till 31st March, 2013. Therefore, the process undertaken by the respondent No.6 by issuing advertisement dated 29th December, 2012 was during the extended period to fill in the posts from backlog and, therefore, the action of the respondent No.6 to advertise the posts and fill in the backlog was justified in view of the extended period for filling in the backlog till 31st March, 2013. Therefore, learned Counsel for the petitioners submits that, the petitions deserve to be allowed.

He further submits that, not only the petitioners but, other one candidate has completed three years satisfactory service and on expiry of three years satisfactory service, they have become deemed permanent employees and, therefore, the respondent

No.4 may be directed to grant approval to the appointments of the petitioners.

3. The learned Counsel for the respondents No.5 and 6 invited our attention to the averments in the affidavit-in-reply and submits that, for the inaction on the part of the respondent No.4 in not giving timely instructions to the respondent No.6 to absorb surplus teachers and not acting upon the letter written by respondent No.6 on 21st December, 2012, the respondent No.6 proceeded to advertise the posts and after adhering to the procedure established, appointed the candidates after proper selection process. He submits that, it appears that, there are seven vacant posts in the respondent No.5 and 6 - institutions. However, there are no any instructions from the respondent No.4 for absorption of any surplus teacher. As a matter of fact, two posts have been filled in out of surplus teachers as per the directions of respondent No.4. He, therefore, submits that this Court may pass appropriate orders taking in view the material placed on record.

4. On the other hand, learned AGP invited our attention to the averments in the affidavit-in-reply and submits that, the respondent No.4 by his letter dated 24.11.2013 addressed to the respondents No.5 and 6 pointed out six deficiencies / requirements on the part of the management. He further submits that, by another letter, respondent No.4 communicated to the respondents No.5 and 6 that, approval to the appointment of the petitioners is rejected on the ground of general ban to recruitments and that, no prior permission was taken by the respondent No.6 from the respondent No.4. Therefore, the learned AGP submits that the petition may be rejected.

5. We have heard learned Counsel for the petitioners, learned AGP appearing for the respondents No.1, 2 and 4 and the learned Counsel for respondents No.5 and 6; with their able assistance, perused the pleadings in the petition, annexures thereto, affidavit-in-reply filed by the respondents, and the relevant Government Resolution.

6. Upon careful perusal of the Government Resolution dated 10th April, 2012 issued by the General Administration Department, Government of Maharashtra (Exh.L page 49 to the compilation of the petitions), it is abundantly clear that, for filling in the posts from reserved categories so as to complete the backlog, time was extended till 31st March, 2013 and the respondent No.6 advertised the posts in the month of December, 2012. That too, after addressing a letter to the respondent No.4 on 21st December, 2012 seeking permission for advertising the posts. Therefore, the ground that there was General Ban for the recruitment by the State Government and therefore, respondent No.6 should not have proceeded with the recruitment is devoid of any merits and said ground cannot sustain in the light of the Government Resolution dated 10th April, 2012.

7. As rightly contended by the learned Counsel for the petitioner, there is no denial to the fact that, letter dated 21st December, 2012 written by the respondent No.6 to

the respondent No.4 was received by the office of the respondent No.4. Therefore, if at all the respondent No.4 wanted to give contrary instructions, not to go ahead with the recruitment process, at any stage after receipt of said letter, including at the midst of the selection process, it was possible for the respondent No.4 to issue such instructions to the respondent No.6. However, it appears that, respondent No.4 allowed the respondent No.6 to go ahead with the selection process in pursuance to the advertisement. Admittedly, all the three candidates who participated in the selection process and got selected, are from reserved categories as shown in the advertisement. Therefore, there is no dispute to the fact that the advertisement was issued to fill in the posts from reserved categories so as to complete the backlog. As rightly contended by the learned Counsel for the petitioners, that out of six deficiencies / requirements pointed out *vide* letter dated 24.11.2013 written by the respondent No.4 to the Management, four deficiencies were complied with by the respondent No.6. The letter dated 1st September, 2014 written by the respondent

No.4 to the management mentions only two deficiencies; firstly, there was General Ban and secondly, no prior permission was taken before advertising the posts.

8. In the light of the discussion herein above, it is clear that, both the grounds cannot sustain. Therefore, the inevitable conclusion is that, the impugned communications / orders deserve to be quashed and set aside.

9. In the result, writ petitions are allowed in terms of prayer clauses (A). We direct the respondent No.4 to consider the proposals for approval to the appointments of the petitioners, afresh and without raising the grounds / deficiencies raised in the impugned communications, subject to compliance of other formal procedure / requirements and take decision, as expeditiously as possible; however, within six weeks from today and communicate the said decision to the petitioners and respondents No.5 and 6.

Petitions stand disposed of, accordingly. Rule made absolute in the above terms with no order as to costs. Parties to act upon authenticated copy of this judgment.

[P.R. BORA, J]

[S.S. SHINDE, J]

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