

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

**WRIT PETITION NO.10364 OF 2015**

Sushilkumar s/o. Ramnath Nagpure,  
Age 46 Years, Occ : Service as  
A Head Master, Pandurang  
Madhyamik Vidyalaya, Warur, tq.  
Shevgaon, Dist. Ahmednagar

**PETITIONER**

**VERSUS**

1. The State of Maharashtra  
Through its Secretary,  
Education Department,  
Mantralaya, Mumbai-32.
2. The Education Officer  
[Secondary]  
Zilla Parishad, Ahmednagar.
3. The President / Secretary,  
Shri Marutrao Ghule Patil  
Education Society, Bhenda  
Taluka Newasa District  
Ahmednagar

**RESPONDENTS**

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Mr.A.N.Kakade, Advocate for the petitioner  
Mr.S.D.Kaldate, AGP for Respondent Nos.1 & 2  
Mr.M.S.Taur, Advocate for Respondent No.3.

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**CORAM: S.S.SHINDE &  
SANGITRAO S.PATIL,JJ.**

Reserved on : 13.06.2016  
Pronounced on : 29.06.2016

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

This Petition takes exception to the *inter-se* communication between the Secretary/President/Headmaster/Administrator of Shri. Marutrao Ghule Patil Education Society, Bhenda, Taluka Newasa, District Ahmednagar and the Education Officer [Secondary], Zilla Parishad, Ahmednagar, dated 3<sup>rd</sup> September, 2015 [Exhibit-F Page-32].

2. The learned counsel appearing for the petitioner submits that the reasons assigned by the Education Officer for refusal of approval to the appointment of the petitioner as Headmaster is not sustainable. He submits that the management decided to appoint the petitioner as Headmaster by passing a Resolution dated 1<sup>st</sup> July, 2015. The proposal was submitted to the Education Officer for approval to the appointment of the petitioner. When the petitioner was

appointed, he was possessing qualification of M.A. B.Ed. and on the basis of the said qualification, he was appointed as an Assistant Teacher on 13<sup>th</sup> April, 1996. He invited our attention to the various documents placed on record by which the approval to the appointment of the petitioner is granted by the Education Officer. He submits that the respondent management is running only Secondary Schools and therefore, the initial appointment of the petitioner was in the Secondary School namely Jijamata Madhyamik and Uchchya Madhyamik Vidyalaya. As such the petitioner is teaching to the students of the Secondary School from his initial appointment as Assistant Teacher.

3. The learned counsel also invites our attention to the provisions of Rule 3 (1) (b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules' for short) and submits that the

petitioner's case is fully covered by the said Rule and therefore, the management has rightly appointed him as Headmaster so as to fill up in the backlog of the Special Backward Category. Therefore, relying upon the pleadings in the Petition, annexures thereto, the relevant provisions of the MEPS Rules, various orders passed by this Court and also the judgment of the Bombay High Court in the case of ***New English High School Vs. Baldev s/o. Fakira Ade and Anr.***<sup>1</sup>, he submits that the Petition deserves to be allowed.

4. On the other hand, the learned AGP appearing for the respondent – State submits that the initial appointment of the petitioner was in D.Ed. pay scale and his name is also included in the seniority list prepared by the respondent management and duly approved by the Education Officer from

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S.S.C. D.Ed. category. There were two separate seniority lists for the candidates, who were appointed from the S.S.C. D.Ed pay scale and trained Graduate pay scale.

5. The learned counsel appearing for the respondent – management relying upon the affidavit-in-reply submits that the management, keeping in view the roster and vacancy position, appointed the petitioner on the post of Headmaster so as to fill up in the backlog of the Special Backward Category. However, respondent no.3 has filed short affidavit wherein it is stated that the management has maintained the seniority lists of the teachers who are working in D.Ed. pay scale and B.Ed. pay scale separately. The name of the petitioner appears at Serial No.7 in the category of D.Ed. pay scale. The petitioner belongs to Koshti Class, which is recognized as Special Backward Category. There are 15 teachers, who are working in the

D.Ed. pay scale in the various schools run by respondent no. 3 society. The teachers, who are working in B.Ed. pay scale, their seniority list is maintained separately and the names of 78 teachers appear in the said list. The petitioner possesses B.Ed. qualification, however, he is working in D.Ed. pay scale, and therefore, the name of the petitioner is included in the seniority list of the teachers, who are working in the D.Ed. pay scale.

6. The petitioner filed a rejoinder to the affidavit-in-reply filed by respondent no. 2 and stated that the factual position stated by respondent no.3 in the additional short affidavit is not correct. The petitioner was appointed considering his qualification as M.A. B.Ed. and therefore the statement made in the reply filed by respondent no.2 that the petitioner is appointed on the basis of qualification of

S.S.C. D.Ed. is incorrect and contrary to the documents on record.

7. We have heard the learned counsel appearing for the respective parties. Upon careful perusal of the documents placed on record, replies and rejoinder filed by the parties, we are of the opinion that, the petition raises disputed questions of fact and therefore, it would be appropriate to relegate the parties before the Education Officer (Secondary), Zilla Parishad, Ahmednagar so as to afford the parties opportunity of hearing and to place on record the documents in support of their contentions. Hence the following order:

i) The impugned communication dated 3<sup>rd</sup> September, 2015 (Exhibit-F) so far as it relates rejection of proposal of approval to the appointment of the petitioner to the post of Head Master stands quashed.

ii) The parties shall appear before the Education Officer (Secondary) on 2<sup>nd</sup> July, 2016. The parties will be at liberty to place on record the documents, if any, for consideration of the Education Officer. The Education Officer may hear the parties on the same day or may fix the date in near future for further hearing and after hearing the parties, take decision whether to grant approval to the services of the petitioner as Headmaster or otherwise.

iii) This Court has not expressed any opinion on the merits of the claim of the petitioner. So far the contentions raised on merits by the parties, it is for the Education Officer (Secondary) to take appropriate decision, after hearing the parties keeping in view the documents placed on record by the parties and record maintained by the respondents, as

expeditiously as possible, however, within 8 weeks from today and communicate the decision to the petitioner and also respondent no.3 management.

iv) Since the petitioner is already working as Headmaster by virtue of the Resolution passed by the respondent no. 3 management, we direct the respondents to maintain *status quo* in respect of the post held by the petitioner as on today, until the Education Officer (Secondary) decides the issue.

v) The Writ Petition is disposed of in the above terms. No costs. The parties shall act upon authenticated copy of this order.

Sd/-

**(SANGITRAO S.PATIL)**  
**JUDGE**

Sd/-

**(S.S.SHINDE)**  
**JUDGE**