

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11205/2015

Nitin S/o Vijay Thorat,
Age 27 years, Occ.: Service
as Assistant Teacher
in Shrirampur Education
Societies High School
Gondhwani Road, Shrirampur,
District 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] President/Secretary,
Shrirampur Education Society,
Shrirampur. Taluka Shrirampur,
District Ahmednagar.

4] The Head Master,
Shrirampur Education
Societies High School
Gondhwani Raod, Shrirampur.
District Ahmednagar.

...Respondents...

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Shri A.N.Kakade, Advocate for the Petitioner.
Smt. M.A.Deshpande, AGP for Respondent Nos.1 & 2.
Shri P.V.Barde, Advocate for Respondent Nos.3 & 4.

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

DATE: 15.11.2016

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

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

2] Mr.Kakade, learned counsel for the petitioner submits that the petitioner possesses the qualification of M.A., B.Ed. in Geography subject. The respondent – institution published an advertisement inviting applications for the post of Assistant Teacher in Geography subject. Pursuant to the said advertisement, the petitioner applied and after undergoing the selection process, the petitioner was selected and appointed on the said post. The proposal was submitted to the respondent – authority seeking approval to the appointment of the petitioner. The same is rejected by the respondent no.2 on the ground that the vacancy in respect of the category from which the petitioner is appointed does not exist and that the appointment is made during the ban period. The

learned counsel submits that the appointment of the petitioner was pursuant to the permission granted by this Court to fill in the post. The petitioner belongs to open category and the post is vacant to be filled in from open category.

3] Mr.Barde, learned counsel for the institution submits that the appointment has been made after following the due procedure of law. The vacancy exists and in the clear vacant post meant for open category candidate, the petitioner has been appointed. The institution would fill in the reserved category post as would be available.

4] Learned AGP submits that the appointment of the petitioner was during the ban period i.e. the Government had banned fresh recruitment. According to the learned AGP, the Roster was also not verified by the B.C. Cell so also backlog has not been filled in.

5] We have considered the submissions canvassed by the learned counsel for the respective parties.

6] It would not be open for the respondent – authority to contend that the appointment of the petitioner was during the ban period for the simple

reason that this Court under order dated 6.7.2012 in Writ Petition No.5348/2013 had permitted the institution to appoint one teacher in Geography and the said appointment shall be subject to further orders passed in Writ Petition No.5348/2003. As such, the respondents were required to consider the proposal seeking approval to the appointment of the petitioner in the light of the order passed in Writ Petition No.5348/2003. The same could not have been rejected on the ground that the appointment was made during the ban period.

7] Learned AGP has received the instructions from the Education Officer (Secondary) under communication dated 21.10.2016 that five posts are vacant. The petitioner is appointed from the open category and the post of graduate teacher from open category is vacant. In view of the said communication, even the ground agitated by the respondent – authority in order that the appointment of the petitioner is not made from the category for which the post is vacant would not survive.

8] In the light of the above, the impugned order is quashed and set aside. The respondent – authority shall consider the proposal for approval to the appointment of

the petitioner and shall not reject it on the ground that the appointment of the petitioner was during the ban period or that the vacancy did not exist of the category from which the petitioner is appointed. However, the approval that may be granted by the respondent authority would be subject to the orders that would be passed in Writ Petition No.5348/2003.

9] Rule is made absolute in above terms. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)