

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

WRIT PETITION NO.11535 OF 2015

Ashok S/O. Nilkanth Dhale,
Age 25 years, Occ. Service,
R/o. Murud, Tq. and Dist. Latur ..Petitioner

Vs.

- 1] The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32
- 2] The Deputy Director of Education,
Latur Division, Latur
- 3] The Education Officer (Primary),
Zilla Parishad, Latur
- 4] The Rural Education Society, Murud,
Tq. and Dist. Latur,
Through its Secretary
- 5] The Head Mistress,
Janta Vidyamandir Primary School,
Murud, Tq. and Dist. Latur ..Respondents

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Mr.R.D.Biradar, Advocate for petitioner

Mr.V.H.Dighe, AGP for respondent nos.1 and 2

Mr.D.S.Mali, Advocate for respondent no.3

Mr.N.B.Ghute, Advocate for respondent nos.4 and 5

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : JUNE 08, 2016**

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

Heard.

2] Rule. Rule made returnable forthwith. By consent of the learned Counsel appearing for the parties, the petition is heard finally.

3] This petition is filed seeking direction to the respondent/authorities to grant approval to the proposal for appointment of the petitioner as Teacher from 21.08.2013 in respondent no.5 - School and to release the arrears of salary of the petitioner.

4] During pendency of the petition, the proposal for approval to the appointment of the petitioner has been rejected by respondent no.3 - Education Officer (Primary), Zilla Parishad, Latur on the

ground that in view of the Government Resolution dated 02.05.2012 issued by the School Education Department unless all the surplus teachers are absorbed, no approval can be granted to the fresh appointments. The petitioner has amended the petition and also challenged the said communication issued by the Education Officer. To that effect, the petitioner has incorporated prayer clause (BB).

5] It appears that the respondent - Management published an advertisement in 'Daily Punyanagari' on 28.07.2013 thereby inviting applications for four vacant posts of teachers.

6] It is submitted by the learned Counsel appearing for the petitioner that the petitioner applied for the post of teacher from NT-C category. After following the due procedure, the petitioner was selected for the said post and

appointment letter was issued on 21.08.2013. Respondent no.5 forwarded the proposal to respondent no.3 on 05.12.2013 for approval to the appointment of the petitioner as Teacher from NT-C reserved category. Thereafter, a reminder was also sent by respondent no.5. However, the proposal was kept pending by respondent no.3. During pendency of this petition, the said proposal has been rejected.

7] According to the learned Counsel for the petitioner, in view of the Government Resolution dated 13.04.2011 issued by the General Administration Department, Government of Maharashtra, as a special case, the concerned institutions were allowed to appoint the candidates from the reserved category so as to fill in the backlog. It is further submitted that all the departments of the Government of Maharashtra were instructed accordingly. The

learned Counsel also invites our attention to the subsequent Government Resolution issued on 21.08.2013 by the General Administration Department, Government of Maharashtra and submits that by issuing the said Government Resolution, further time was extended till 31.03.2013 for appointments of the candidates from the reserved category, as a special case. Therefore, in view of the decision taken by the Government of Maharashtra, as reflected in the aforementioned Government Resolution, respondent no.3 - Education Officer ought to have granted approval to the appointment of the petitioner as a Teacher. However, the Education Officer has rejected the same on the ground that unless surplus teachers are absorbed, no approval can be granted. Therefore, he submits that the petition may be allowed.

8] On the other hand, the learned Counsel appearing for respondent no.3, relying on the averments in the affidavit-in-reply and the contents of the impugned letter, submits that the petition may be rejected. The learned AGP appearing for respondents - State also adopts the arguments advanced by the learned Counsel appearing for respondent no.3.

9] We have given careful consideration to the submissions advanced by the learned Counsel appearing for the petitioner, learned AGP for respondent nos.1 and 2 - State, the learned Counsel appearing for respondent no.3 and the learned Counsel appearing for respondent nos.4 and 5. With their able assistance, perused the pleadings in the petition and annexures thereof. Clauses 1 and 2 of the Government Resolution dated 13.04.2011 issued by the General Administration Department, Government of Maharashtra, reads thus :-

"१) गट-अ व गट-ब संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची विशेष मोहीम सुरु करण्यात यावी.

२) गट-क व गट-ड संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची पदभरतीची प्रक्रिया सुरु करण्याकरिता वित्त विभागाच्या दिनांक २९.११.२०१० च्या शासन निर्णयाच्या आधीन राहून विशेष मोहीम करण्यात यावी."

Thereafter, by issuing another Government Resolution dated 21.08.2013, time to appoint the candidates from the reserved category, so as to fill in the backlog, has been extended till 31.03.2013.

10] In the present case, the petitioner is appointed as Teacher on 21.08.2013. There is no contest on the part of the respondents to the statement made in the petition that the petitioner belongs to NT-C category. Admittedly, the posts of Teachers are reserved for the said category.

11] In the impugned communication, the Education Officer placed reliance on the Government Resolution dated 02.05.2012 issued by the School Education Department, Government of Maharashtra. Prior to issuance of the said Government Resolution, the General Administration Department, Government of Maharashtra has issued Government Resolution on 13.04.2011 and as a special case, allowed the institutions to fill-up the posts reserved for the backward category and therefore, the ban imposed by the Government Resolution dated 02.05.2012 would not apply to the present case since the petitioner's appointment was from the NT-C reserved category.

12] In that view of the matter, the impugned communication dated 22.02.2016 issued by respondent no.3 – The Education Officer (Primary), Zilla Parishad, Latur is quashed and set aside. Respondent no.3 is directed to consider the

proposal for appointment of the petitioner as Teacher afresh without raising the same reasons which are mentioned in the impugned communication, as expeditiously as possible, however within a period of four weeks from today, and communicate the decision to respondent nos.4 and 5.

13] The Writ Petition stands allowed in the above terms. Rule is made absolute accordingly. No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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