

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

WRIT PETITION NO.11613 OF 2015

Gangadhar Baburao Shere,
Age: 32 Years, Occu. Service,
R/o. Nagalgaon, Tq.Udgir,
Dist. Latur

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32.
- 2] The Education Officer [Secondary],
Zilla Parishad, Latur,
Tq. Dist. Latur
- 3] The headmistress,
Smt. Rukminimath Sure Girl's Vidyalaya,
Nagalgaon, Tq. Udgir, Dist. Latur

[Copy to be served on the
Govt. Pleader, High Court of
Bombay, Bench at Aurangabad]

RESPONDENTS

...
Mr. V.D.Gunale, Advocate for the Petitioner
Mr. D.R.Kale, AGP for the Respondent Nos.1 and 2 / State
Mr. V.G.Kodale, Advocate for Respondent No.3.
...

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

Reserved on : 01.03.2016
Pronounced on: 04.03.2016

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3] This Petition takes exception to the impugned order dated 08.09.2015 issued by respondent no. 2 Education Officer, thereby refusing approval to the appointment of petitioner, and further seeking direction to the Education Officer to grant approval to the appointment of petitioner and release the salary grants.

4] It is the case of the petitioner that, the petitioner is possessing the educational qualification of B.Sc. B.Ed., therefore, he is trained candidate within the meaning of Rule 2 [k] of the MEPS Rules, for the appointment on the post of teacher. It is further the case of the petitioner that, due to retirement of teachers, two posts in the respondent no. 3 school became vacant. One Shri G.P.Kulkarni, Assistant Teacher, retired on 31.12.2010, who was teaching the science subject. Due to his retirement, there was no teacher in the school for teaching science, possessing the qualification of B.Sc. B.Ed.

5] It is further the case of the petitioner that, there was dispute in the management and different change reports of the elections by rival groups of the Managing Committee were pending in the office of Assistant Charity Commissioner. However, due to the said dispute, there were no appointments of teachers, ultimately, the students were suffering because of not having requisite number of teachers for teaching the subjects. Therefore, respondent no. 3, vide its application dated 6th January, 2011, sought permission from the Education Officer to fill in two vacant posts of Assistant Teachers, in order to avoid an inconvenience to the students, as there was no teacher for science subject in the said school. On receipt of the application from the Headmistress i.e. respondent no. 3, Education Officer, vide its communication dated 07.01.2011, granted permission to fill in two posts to avoid educational loss of the students keeping in view that, there is dispute in the management, and no management duly approved by the competent authorities is in the office. In the said communication, the Education Officer stated that, there is one post from S.T. category to be filled in out of two posts available as per roaster, and on condition to fill up one post from the said category, the permission was

granted to fill up those two posts. The school authority was directed to get the roster of reservation verified from the Competent Authority. However, to avoid the inconvenience of the students, the permission was granted to fill those posts by appointing the qualified candidates. The learned counsel appearing for the petitioner invited our attention to the contents of the letter dated 7th January, 2011, written by the respondent no. 2 to the concerned Head Master.

6] It is further the case of the petitioner that, as there was dispute in the management, therefore, respondent no. 3 Headmistress issued an advertisement in the news paper '*Deshbhakt*', dated 8th January, 2011, and invited applications from the eligible candidates to the post of Shikshan Sevak; one post is for B.A.B.Ed. and one post was for B.Sc. B.Ed. In pursuance of the said advertisement, the petitioner applied to the said post. He was interviewed by the local selection Committee along with other candidates. Total five candidates including the present petitioner were present to the interview on 16th January, 2011, those who were possessing the qualification of B.Sc. B.Ed., all were from open category and no candidates from reserved category remained present to the said interview.

The learned counsel appearing for the petitioner invited our attention to the advertisement, which is placed on record. It is further the case of the petitioner that, the Local Selection Committee conducted the interviews, and accordingly selected the petitioner. Considering his teaching performance to the post of Shikshan Sevak for science subject, and accordingly respondent no. 3 issued an appointment order in favour of the petitioner as Shikshan Sevak on probation for a period of three years i.e. from 01.02.2011 to 31.01.2014. He invited our attention to the copies of the appointment order dated 1st February, 2011 and joining report dated 1st February, 2011.

7] It is further the case of the petitioner that, his appointment was on clear sanctioned vacant post. The authorities of respondent no. 2 has carried out the inspection of the said school for every year and on the basis of strength of the students, sanctioned the staff. The appointment of petitioner is within the sanctioned staff which reveals from the staff approval for the year 2010-2011. The learned counsel invited our attention to the copies of the staff approval for the year 2010-11, 2012-13 and 2013-14. It is further the case of the

petitioner that, as the provisions of Rule 12 of the MEPS Rules, the respondent no. 3 school has prepared a seniority list of teaching and non-teaching staff of the said school for the year 2011-12 and 2014-15 and in the said seniority list, the name of the petitioner is appearing at serial No.6. The petitioner has placed on record copies of seniority list at Exhibit-F.

8] It is further the case of the petitioner that, since from his appointment, he is discharging his duties as Shikshan Sevak sincerely and honestly and to the satisfaction of the respondents, there is no single complaint against him about his teaching performance either from the students or from the school authorities. He has not received single memo or show cause notice from the school authorities. He is the only teacher of science subject in the said school. He has successfully completed his probation period of three years as Shikshan Sevak in the year 2014 itself. Therefore, as per the provisions of sub-rule 2 [a] of the MEPS Rules, after completion of his probation period of three years as Shikshan Sevak, he is deemed confirmed employee of the said school. It is further the case of the petitioner that, respondent no. 3 submitted the proposal

along with all requisite documents in the office of respondent no. 2 for approval to the appointment of petitioner every year. However, those proposals were kept pending undecided by the respondent no. 2, and therefore, the petitioner was required to approach this Court against inaction on the part of the Education Officer, by filing Writ Petition No.5846/2015. The said Writ Petition was heard by this Court and disposed of the same with directions to the respondent no.2 to decide the proposal for approval to the appointment of the petitioner, submitted by the respondent no.3, on its own merits in accordance with law expeditiously and preferably within a period of six months from the date of order.

9] It is further the case of the petitioner that, there is dispute in the management between two groups, therefore, the Headmistress was required to fill in those posts in the year 2011 with the permission of the Education Officer. However, one of the group posing themselves as office bearers have filed Writ Petition No.3616/2014, before this Court making allegations to cancel the appointment of the petitioner and two others, which was made in the year 2011. The said Writ Petition was heard by this Court on

03.02.2015, and this Court declined to entertain the said Writ Petition, therefore, the petitioner has withdrawn the said Writ Petition and accordingly the said Writ Petition came to be disposed of as withdrawn. It is further the case of the petitioner that, after the order of this High Court dated 15.06.2015 passed in Writ Petition No.5846/2015, the respondent no. 2 vide his communication dated 16.07.2015, called upon the Headmistress as well as the petitioner for hearing in his office on 21.07.2015 along with record. The petitioner as well as respondent no. 3 Headmistress remained present in the office of respondent no. 2 on 21.07.2015. Respondent no. 3 produced the record of staff approval from the year 2011-12 till 2013-14, so also seniority list of teaching and non teaching employee. The Headmistress submitted in writing before the Education Officer on 21.07.2015, during the course of hearing and pointed out that, there was no teacher for mathematics and science subjects in the school, and therefore, the said post is filled in by appointing the petitioner. However, there is backlog of one post of S.T. category in the school. No candidates possessing B.Sc. B.Ed. qualification from the said category had applied. It is submitted that, there is no any other teacher, and

petitioner is the only teacher for teaching science and mathematics subject in the school. He is discharging his duty continuously since 2011, therefore, considering his four years service and also to avoid the educational loss of the students, approval be granted to the appointment of petitioner.

10] It is further the case of the petitioner that, the Education Officer vide its communication dated 8th September, 2015, refused to grant approval to the appointment of the petitioner on the ground that, as per the staffing pattern there are total 8 sanctioned posts in the respondent no. 3 school, however, the Assistant Commissioner verified the roster of said school on 10.02.2014 and found that, as per the roster of reservation, 7 posts are filled in and one post is vacant and there is backlog of one post for S.T. category in the school and the appointment of the petitioner made in the year 2011 is from open category, therefore, no approval can be granted to his appointment. Hence this Petition.

11] The learned counsel appearing for the petitioner submits that, the selection of the petitioner is in pursuant to the adherence to the relevant provision. The

petitioner is fully qualified. He is appointed against a vacant and clear post. He joined the said post on 1st February, 2011. It is further submitted that, the petitioner has completed more than 4 years continuous service, and therefore, as per the provisions of sub section 2 [a] of Section 5 of MEPS Act, he is deemed confirmed employee and after completion of his probation period of three years, he has continued in service and still he is in service. It is submitted that, it is true that, there is backlog of one post for S.T. category in the school. However, candidate from said category was not available even after advertising the post, the same is filled in by appointing the petitioner keeping in view the interest of the students. It is submitted that, the management has filed an undertaking that, as and when next vacancy would arise, the management will appoint the candidate from S.T. category. He further submits that, the petitioner is the only teacher of science and mathematics subject in the school. He is discharging his duty sincerely and honestly. He is from poor family and he has no any other source of income for his livelihood. It is submitted that, because of refusal of the approval by the management, it is likely that, his services may be terminated by the respondent management.

12] The learned counsel appearing for the petitioner pressed into service exposition of the Full Bench of the Bombay High Court in the case of *Ram Avadh Mahel Pal Vs. Shivdutta Educational Trust and others*¹ and submits that, the Full Bench in the said Judgment has ruled that, every person appointed as Shikshan Sevak shall be on probation for a period of three years. Moreover, subject to the provisions of Sub-sections (3) and (4) of Section 5 a Shikshan Sevak shall on completion of the probation period of three years be deemed to have been appointed and confirmed as a teacher. Therefore, he submits that, since the petitioner has completed three years period without any break and discharging the duties sincerely, honestly and without any complaints, and therefore, in view of the exposition of the Full Bench in the case of *Ram Avadh Mahel Pal Vs. Shivdutta Educational Trust and others* [cited *supra*], he is deemed to have been appointed and confirmed as a teacher.

The learned counsel appearing for the petitioner further invited out attention to the Judgment of the Division Bench of the Bombay High Court at Principal seat in the case of *Lalitha Thutpi Vs. C.B.Karkhanis*,

1 2007 [6] Mh.L.J. 659

Presiding Officer, School Tribunal Bombay & others reported in MEC 1532 and submits that, in that case, on interpretation of section 5 [1] and 5 [2] of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977, the Court has ruled that, candidate from reserved category was not available, and if other person is appointed on the said vacancy, two conditions for claiming a permanency are (1) a candidate should be qualified for holding such post and (ii) he/she should have put in more than two years of continuous service. Therefore, the learned counsel appearing for the petitioner submits that, in the facts of that case, the Court has ruled that, the petitioner therein has become permanent. Therefore, he submits that, the Petition deserves to be allowed.

13] The learned counsel appearing for the respondent no. 3 invited our attention to the averments in the affidavit-in-reply and submits that, as no candidate from S.T. category was made available possessing the qualification of B.Sc. B.Ed. and to avoid educational loss of the students, respondent no. 3 appointed the petitioner on the said post from open category and since his appointment, he is working in the respondent no. 3 school.

He has completed his probation period of three years as Shikshan Sevak and he is in continuous service in the respondent no. 3 school. He further invited our attention to the para 7 of the affidavit in reply filed by the respondent no.3 and submits that, the management has filed undertaking stating therein that, steps will be taken to fill in the backlog of S.T. category, on the post which will become vacant in the school henceforth, and said post will not be filled in from another category, except the candidate from S.T. category, in the respondent no. 3 school. The learned counsel also invited our attention to the fact that, though the advertisement was given and the post was reserved for S.T. category candidate, no candidate from the said category was available and even for other reserved category candidates have also not applied to the post. Considering the urgency and need of the teacher to teach science subject, the Local Selection Committee selected the petitioner to the said post of Shikshan Sevak. The learned counsel invited our attention to the advertisement, which is placed on record. Therefore, relying upon the averments in the affidavit in reply, he submits that, the Petition deserves to be allowed.

14] The respondent no. 2 has filed affidavit-in-

reply . The learned AGP appearing for the respondent no.2 submits that, the Education Officer, after following procedure and after giving an opportunity of hearing to the petitioner and the concerned parties, has passed the impugned order. He submits that, the post, on which the petitioner is appointed, is reserved for S.T. category as per the roster. He further submits that, the Education Officer though given permission to fill in the said post, in the said letter, it was made clear that, the management should appoint the candidate from the S.T. category, however, in breach of the said written directions to the Headmaster, he appointed the petitioner, who is not from any reserved category. It is further submitted that, in case the candidate from the reserved category is not available, the respondent management has to follow the provisions of Rule 9 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Rules, 1981. It is submitted that, in case the candidate from the particular category is not available, the management has to follow the mandate of Rule 9A and the procedure stated in the said Rule. Therefore, the learned AGP submits that, the appointment of the petitioner is not sustainable in law, and therefore, the order passed by the Education Officer, refusing approval,

deserves no interference in extra ordinary writ jurisdiction. Therefore, he submits that, Writ Petition may be rejected.

15] We have heard the learned counsel appearing for the petitioner, learned counsel appearing for the respondent management, and the learned AGP appearing for the respondent nos. 1 and 2. With their able assistance, perused the pleadings in the petition, annexure thereto, reply filed by the respondent no. 2, and the relevant provisions of the MEPS Rules, 1981, and also the judgments of the Full Bench and the Division Bench cited across the bar by the learned counsel appearing for the petitioner. It is not in dispute that, the respondent no. 3 sought permission from the Education Officer to fill in two vacant posts of Assistant Teachers. Admittedly, out of two posts, the permission was granted by the Education Officer to fill in the said post was subject to fill in one post from S.T. category. Admittedly, the advertisement was issued advertising the posts, one for S.T. category. However, according to the petitioner and the respondent no. 3, suitable candidate from the said category, possessing B.Sc. B.Ed. qualification had not applied for the said post, and therefore, in order to avoid loss to the students, the

management proceeded to appoint the petitioner, who is teaching science and mathematics subjects. It is stated that, the petitioner is the only teacher, who is teaching the science and mathematics subject. Therefore, it is not in dispute that, the advertisement was issued taking prior permission of the respondent no. 2, and after following procedure, the posts were filled in. However, as directed by the respondent no. 2 to fill in one post from S.T. category, the same has not been adhered to by the respondent no. 3. There is no denial to the fact that, the candidate, possessing B.Sc. B.Ed. qualification from S.T. category, did not apply in pursuant to the advertisement issued by the respondent no. 3.

16] It is not in dispute that, the petitioner has been appointed as Shikshan Sevak on 1st February, 2011. He has rendered three years satisfactory services. Admittedly, the Respondent – management was supposed to fill in the vacancy from the S.T. category, however, circumstances are brought on record that, the candidate from the said category was not available, therefore, the petitioner was appointed. The learned counsel appearing for the petitioner has invited our attention to the judgment of the Full Bench

of Bombay High Court in the case of **Ram Avadh Mahel Pal V/s Shivdutta Educational Trust and ors.**² and submits that, on completion of three years successful period, the petitioner who was appointed as Shikshan Sevak on regular basis, on completion of the said period, deemed to have been appointed on regular basis. He also invited our attention to the another judgment in the case of **Lalitha Thutpi V/s C.B. Karkhanis, Presiding officer, School Tribunal Bombay and others**³ and submits that, in the facts of that case, the Division Bench took a view that, if the qualifications are possessed by the candidates and two years probation period is completed, in that case, such appointment deserves to be protected, by directing the Respondent – Management to carry forward the post for the reserved category.

17] Upon perusal of those judgments, and if the ratio laid down in those judgments, is applied in the present case, we find that, in the present case also, the petitioner has completed three years service as Shikshan Sevak, and there is assurance by the Respondent – management that, on immediate next vacancy, the Management will appoint

2 2007(6) All M.R. 716

3 1998(1) Mah. L.R. 235

the candidate from S.T. category. Therefore, for the reasons aforesaid and since the petitioner has completed more than three years probation period and possess requisite qualification, the petitioner is entitled for the relief claimed in the Petition.

18] In the result, the impugned communication is quashed and set aside. The Respondent No.2 – Education Officer is directed to reconsider the proposal for granting approval to the services of the petitioner and for continuation of the petitioner, as an Assistant Teacher, as expeditiously as possible, and preferably, within eight weeks from today.

19] Needless to observe, the Education Officer shall not raise the grounds raised in the impugned communication while rejecting the approval to the services of the petitioner, however, subject to fulfillment of usual formalities grant approval to the services of the petitioner by obtaining the specific undertaking from the Respondent – management that, on immediate next vacancy, the Respondent – Management will appoint the candidate from S.T. category.

20] The Petition is partly allowed and same stands disposed of.

21] Rule made absolute in the above terms.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

DDC