

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

WRIT PETITION NO.11866 OF 2014

Promodini s/o. Ankush Kalshe,
Age : 29 years, Occ. Service,
R/o. Panchincholi, Tq. Nilanga,
Dist. Latur

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032
2. Education Officer (Primary),
Zilla Parishad, Latur
3. Lokmanya Shikshan Sanstha,
Panchincholi,
Through its President –
Vikram Dhondiram Patil,
Age :50, years,
r/o. Panchincholi,
Tq. Nilanga, Dist. Latur

4. Head Mistress,
Lokmanya Primary School at
Panchincholi, Tq. Nilanga,
Dist. Latur

..Respondents

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Mr.N.P.Patil-Jamalpurkar, Advocate for petitioner

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

Mr.P.G.Rodge, Advocate for respondent no.3

Mr.Amol Patale, Advocate i/b.Mr.H.V.Patil,
Advocate for respondent no.4

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

DATE : JULY 20, 2016

PER COURT :

Heard.

2. Being aggrieved by the communication/letter written by the Education Officer (Primary), Zilla Parishad, Latur to respondent no.4 – Head Mistress of school dated 03.12.2014, denying approval to the appointment of the petitioner on compassionate ground, present petition is filed.

3. The learned Counsel for the petitioner submits that the father of petitioner died during the course of employment with respondent no.4. The petitioner applied to respondent no.4 for appointment to the post of Assistant Teacher on compassionate ground. Respondent no.4 favourably considered the application of the petitioner.

Respondent no.3 - the management of school passed a resolution and in pursuance of the resolution, the petitioner has been appointed on compassionate ground as an Assistant Teacher with respondent no.4. Accordingly, respondent no.4 forwarded a proposal to respondent no.2 - the Education Officer for approval to the appointment of the petitioner, however, the same has been turned down for unsustainable ground that respondent no.4 has not adhered to the directions of the Education Officer to appoint a surplus teacher.

4. The learned Counsel for the petitioner submits that in fact, the petitioner was appointed on 16.06.2014, on which date or prior to it, there was no any direction issued by the Education Officer to appoint a surplus teacher. It is only after the appointment of the petitioner with respondent no.4, such direction was given by the Education Officer. It is submitted that since the

petitioner's appointment is on compassionate ground, the reasons given by the Education Officer in the impugned letter/communication cannot be sustained.

5. The learned Counsel for the petitioner placed reliance on an unreported judgment of this Court dated 28.10.2014 in the case of **Kailas Rohidas Pawar Vs. The State of Maharashtra and ors. in Writ Petition No.1131 of 2014** and in particular, paragraphs 4 to 6 therein and submits that the concerned Management has to process the application of the candidate and then refer it to the Education Officer for approval. He submits that the Education Officer is not empowered to cancel the post which is approved by the State Government.

6. The learned Counsel for the respondent - Education Officer, relying upon Clause 4-C of the

Circular dated 14.10.2014 issued by the School Education and Sports Department, Government of Maharashtra, submits that the action taken by the Education Officer is based upon the said circular.

7. The learned Counsel for the respondent/Management submits that the petitioner's appointment is in conformity with the scheme and the said appointment deserves to be approved by the Education Officer.

8. We have given careful consideration to the submissions advanced by the learned Counsel for the petitioner, the learned Counsel appearing for respondent - Education Officer and the learned Counsel appearing for respondent - Management. With their able assistance, perused the pleadings in the petition, grounds taken therein and also the Circular dated 14.10.2014, referred to above.

9. Upon careful perusal of the reasons assigned in the impugned communication dated 03.12.2014, it appears that the approval to the appointment of the petitioner has been refused on the ground that the respondent - Management has not absorbed a surplus teacher as directed by the Education Officer. In this respect, it is required to be taken into consideration that when there is an appointment on compassionate ground, the said appointment is given to the son or daughter of the deceased employee so as to enable the family of the deceased employee to overcome the financial crisis. Therefore, such appointment is given in an emergent situation as exception to the general rule and procedure to be followed while making appointments in the public employment.

10. Therefore, in our opinion, the reason of surplus teacher given by the Education Officer while denying the approval to the said proposal,

cannot sustain. Apart from it, if there is any surplus teacher on the roll of the Education Officer, the name of such surplus teacher should have been intimated in advance to the concerned institution including respondent no.3. However, in the facts of this case, it appears that the petitioner was appointed on 16.06.2014. Thereafter, the proposal for approval was forwarded to the Education Officer in the same month and thereafter, the Education Officer directed the respondent - Management to absorb a surplus teacher in the month of October, 2014.

11. Since the reason of surplus teacher stated by the Education Officer in the impugned communication itself cannot sustained in the light of the discussion herein above, the order cancelling the post of the Assistant Teacher cannot sustain.

12. In the circumstances, the impugned communication is quashed and set aside. The post of the Assistant Teacher on which the petitioner is appointed, stands automatically revived with respondent no.4. We direct the respondent - Education Officer to take appropriate decision on the said proposal afresh, without raising the grounds given in the impugned communication, as expeditiously as possible, within four weeks from today and communicate the decision so taken to respondent nos.3 and 4.

13. We make it clear that this order is passed in the peculiar facts and circumstances of this case.

14. The Writ Petition stands disposed of in the above terms.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]