

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

WRIT PETITION NO. 12023 OF 2015

Rahul s/o. Pralhad Chavan,
Age 32 years, Occ. Service
as Assistant Teacher in
Sir D.M.Petit High School,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar

..Petitioner

Vs.

1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai

2] The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

3] The President/Secretary,
Gokhale Education Society,
Vidya Nagar, Nashik

4] The Head Master,
Gokhale Education Society's
Sir D.M. Petit High School,
Sangamner, Tq. Sangamner

..Respondents

**WITH
WRIT PETITION NO. 11148 OF 2015**

Anuja d/o. Nikhil Gawande,
Age 27 years, Occ. Service,
as Assistant Teacher in
Sir D.M.Petit High School,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar

..Petitioner

Vs.

- 1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai
- 2] The Education Officer (Secondary),
Zilla Parishad, Ahmednagar
- 3] The President/Secretary,
Gokhale Education Society,
Vidya Nagar, Nashik
- 4] The Head Master,
Gokhale Education Society's
Sir D.M. Petit High School,
Sangamner, Tq. Sangamner ..Respondents

**WITH
WRIT PETITION NO. 11200 OF 2015**

Radha d/o. Chandrakant Kuwar,
Age 28 years, Occ. Service,
as Assistant Teacher in
Sir D.M.Petit High School,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar ..Petitioner

Vs.

- 1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai
- 2] The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

3] The President/Secretary,
Gokhale Education Society,
Vidya Nagar, Nashik

4] The Head Master,
Gokhale Education Society's
Sir D.M. Petit High School,
Sangamner, Tq. Sangamner

..Respondents

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Mr.Amol N. Kakade, Advocate for petitioner in all
Writ Petitions

Mr.S.K. Kadam, AGP for respondent nos.1 and 2 in
all Writ Petitions

Mr.Y.S. Chaudhari, Advocate for respondent no. 4

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CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : JUNE 16, 2016

PER COURT :

Heard.

2] Since common questions are involved in
all these petitions, they are being disposed of by
a common order.

3] The learned Counsel appearing for the
petitioners submits that all the petitioners

possess the requisite qualification for appointment to the post of Assistant Teacher. Respondent-Management issued an advertisement on 10.06.2013 and in pursuance of the said advertisement, the petitioners applied for appointment to the posts of Assistant Teachers. After following due procedure by the properly constituted committee, wherein one of the committee members was a Government Officer, the petitioners have been selected and appointed as Assistant Teachers in respondent no.4 - School. Prior to issuing the said advertisement for filling up the posts of Assistant Teachers, the respondent-Management had informed the Deputy Director of Education, Mumbai Region, Mumbai, that respondent-Management was going ahead with the recruitment by advertising the said posts. According to the learned Counsel appearing for the petitioners, the petitioners were appointed after following the proper procedure. He submits that

since the petitioners have been appointed in the year 2013-2014, certain rights have been accrued in their favour. He, therefore, prays that these Writ Petitions may be allowed, the impugned order/communication dated 02.09.2014 refusing to grant approval to the services of the petitioners may be set aside and respondent no. 2 may be directed to reconsider the proposals for approval to the services of the petitioners.

4] The learned Counsel appearing for respondent no.4 - School, relying on the averments in the reply filed on behalf of respondent no.4, submits that the appointments of the petitioners have been made after following the due procedure. Prior permission from the competent authority was also sought and thereafter only the advertisement was issued and the petitioners came to be appointed in view of the provisions of Section 5 of the Maharashtra Employees of Private Schools Regulation Act, 1977 (for short "the MEPS Act")

and the Rules thereunder. He supports the claims of the petitioner.

5] The learned A.G.P. appearing on behalf of the respondent nos.1 and 2, relying on the reasons given in the impugned communication, submits that when there was a general ban imposed by the State Government vide Resolution dated 02.05.2012, the respondent-Management was not justified in advertising the said posts. No prior permission of the Education Officer of the Districts concerned or the Educational Inspector of Greater Bombay was obtained and the provisions of Section 5 of the MEPS Act were not adhered to by the respondent-Management. He, further, submits that the roster of reservation was also not followed by the respondent – Management and therefore, the reasons assigned in the impugned communication are in consonance with the documents, the circumstances existing and the facts of the present case. He, therefore, submits that this Court may not invoke extraordinary

jurisdiction and the Writ Petitions may be rejected.

6] We have given careful consideration to the submissions of the learned Counsel appearing for the petitioners, the learned Counsel appearing for respondent nos.1 and 2 – State and the learned Counsel appearing for respondent no.4. With their able assistance, perused the pleadings, the grounds taken in the petitions, the annexures thereto and in particular, the reasons assigned by the Education Officer while rejecting the request of the respondent – Management for approval to the appointments of the petitioners as Assistant Teachers.

7] The first reason assigned by the Education Officer is that in view of the ban imposed by the State Government by issuing Government Resolution dated 02.05.2012, it was not permissible for the respondent – Management to advertise the posts and

go ahead with the recruitment unless the surplus teachers were absorbed. The second reason is about non-seeking of permission of the Education Officer before the posts were advertised and the third reason appears to be that the roster was not followed. There is also a general reason given that the respondent – Management did not adhere to the relevant provisions as contemplated in the MEPS Act and the rules thereunder.

8] Along with the reply, respondent no.2 has annexed a copy of the Government Resolution dated 02.05.2012 issued by the School Education Department, Government of Maharashtra, whereby, the State Government has banned fresh recruitment on the ground that there are surplus teachers available on the role of the State Government and therefore, there should not be fresh recruitment.

9] Upon careful perusal of the documents on record, it appears that the respondent – Management

had addressed a letter to the Deputy Director of Education, Mumbai Region, Mumbai and sought permission to fill in the vacant posts for the academic year 2014-15 in Nashik, Thane and Mumbai Districts. To appreciate, whether the Deputy Director of Education is the competent authority under the MEPS Act, to grant permission or approval for advertising the posts, it would be apt to reproduce the provisions of Section 5 thereof, which read as under :-

5. Certain obligations of Management of private schools : (1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy :

Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy ascertain from the Educational Inspector, Greater Bombay, the

Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy,

(2) Every person appointed to fill a permanent vacancy except Shikshan Sevak shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed :

Provided that, every person appointed as Shikshan Sevak shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), Shikshan Sevak shall, on completion of the probation period of three years, be deemed to have

been appointed and confirmed as a teacher.

(3) If in the opinion of the Management, the work or behaviour of any probationer during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice or salary (or honorarium) of one month in lieu of notice.

10] On plain reading of Sub-Section (1) of Section 5 of the MEPS Act, it is abundantly clear that the Management, if proposes to fill in the permanent vacancies in the private school, unless the said vacancy is to be filled in by promotion, firstly has to ascertain from the Educational Inspector, Greater Bombay or the Education Officer of the Zilla Parishad concerned or, as the case may be, the Director or Officer designated by the Director in respect of the school imparting technical, vocational, art or special education, whether there is any suitable person available on

the list of surplus persons maintained by the said authority.

11] In the facts and circumstances of the present case, so far as Nashik and Thane Districts are concerned, the respondent – Management ought to have written to the Education Officer of the Zilla Parishad concerned. In the case of Mumbai, as provided under Section 5 of the MEPS Act, the Management ought to have sought permission from the Educational Inspector, Mumbai Region, Mumbai or should have informed the said authority about the intention of the Management to fill in the vacant posts. It is abundantly clear that the Deputy Director, Mumbai Region, Mumbai cannot be considered as a competent authority for all these three Districts so as to meet the requirements as stated in Section 5 of the MEPS Act. Therefore, the letter dated 21.05.2013 (Exhibit R-2) addressed by the Management-Respondent to the Deputy Director of Education, Mumbai Region, Mumbai, seeking issuance

of no objection certificate for publishing advertisement to fill up the posts of Shikshan Sevaks, would be of no use to the petitioners and respondent-Management to show compliance of the proviso to Section 5 of the MEPS Act.

12] It is contended by the learned Counsel for the petitioners that as there was no backlog existing for making appointments from the reserved categories, the advertisement was issued for filling in the said posts from the open category. He, therefore, submits that the reasons assigned by the Education Officer in the impugned communication that the respondent – Management has not adhered to the roster, cannot be sustained. However, in this respect, nothing is brought on record by the Management in its reply showing that there was no backlog existing. In the circumstances, the reason assigned by the Education Officer in the impugned communication in that respect, cannot be said to be incorrect. When the appointments of the petitioners

have been made in breach of the ban imposed by the State Government directing the concerned Institutions not to go ahead with fresh recruitments in view of the availability of the surplus teachers on its role and as the appointments of the petitioners were not with the prior permission of the concerned Officers as provided under Section 5 of the MEPS Act, it is not desirable to grant any equitable or discretionary relief in favour of the petitioners.

13] In addition to the reasons which are already assigned herein-above, we have noticed in Writ Petition No.11200 of 2015, that the appointment of the petitioner therein, as contended by the learned Counsel for the petitioner, was made on 28.07.2012, i.e. prior to issuance of Government Resolution dated 02.08.2012 and therefore, the ban contained therein was not applicable. However, the document placed on record at Exhibit 'R-1' page 36 of the compilation of the petition, shows that

the permission was sought from the Deputy Director of Education, Mumbai Region, Mumbai on 21.05.2013. Therefore, though the appointment of the petitioner in that petition was from S.T. Category and that too, prior to issuance of the Government Resolution dated 02.08.2012, we cannot accept the prayer of the said petitioner for his entitlement to get approval for his service as a Teacher.

14] For the reasons aforementioned, we do not see any reason to interfere in the impugned communication/order. All the Writ Petitions stand rejected. No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]