

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5099 OF 2016

The Peoples Education Society .. Petitioner
-Versus-
The State of Maharashtra & Ors. ..Respondents

Mr. Sagar A. Mane i/b. N.V.Bandiwadekar for petitioner
Ms. Nisha Mehra, AGP for State.

CORAM : SHANTANU S. KEMKAR &
PRAKASH DEU NAIK JJ.

DATE : 15th December 2016.

P.C.

1] Feeling aggrieved by the order dated 9th February 2016, passed by the respondent No.3 the petitioner has filed this petition. According to the learned Counsel for the petitioner, the question involved in this petition has also been considered and decided by a Division Bench of this Court in the case of Balmohan Vidya Mandir Vs. State of Maharashtra (W.P.Lod.No.2286 of 2010) decided on 14th October 2010.

2] In the present case, the petitioner's prayer for appointment has been rejected by the Assistant Commissioner. According to the petitioner, there were only two posts of Head Master and as such in view of the law

laid down by this court in the case of Balmohan Vidya Mandir (supra), when there are two posts, none of the posts can be reserved in view of the Government Resolution dated 5th November 2009.

3] Learned Counsel for the petitioner has pointed out that in para 8 of the reply filed by the respondent Nos. 1 and 2 following categorical statements have been made by the State:-

“8. With reference to paras 8 to 11 of the petition, I say and submit that the contents in 12 are matter of record and are correct. As per orders issued/ passed by this Hon'ble High Court, the reservations will not be applicable when there are only two posts in the promotional cadre of Head Master. The issuance of Government Resolution dated 6th February 2012 is a consequence of verdict/ orders passed by this Hon'ble High Court. Under the circumstances, it will be fit for the respondent No.3 to verify the roster maintained by the Management of the non-Government Recognised Secondary/ Higher Secondary Schools and certified accordingly. However, the respondent No.3 would explain as to why he is not prepared to act accordingly.”

4] Keeping in view the aforesaid stand taken by the State as also the law laid down by the Division Bench of this Court in case of Balmohan Vidya Mandir (supra), we are of the opinion that the impugned order is liable to be set aside and the said is set aside. Petition is allowed in terms of prayer clauses (b) and (c). Parties to act on an authenticated copy of this order.

(PRAKASH DEU NAIK, J)

(SHANTANU S. KEMKAR, J)