

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11252 OF 2016

Mrs.Sadhana Satappa Patil	...	...Petitioner
v/s.		
The State of Maharashtra & ors.		...Respondents

...

Mr.N.V.Bandiwadekar h/f Mr.Sagar Mane for the Petitioner.
 Mr.Chetan G.Patil for the Respondents Nos.3 and 4.
 Mr.A.R.Metkari, AGP for the State-Respondents Nos.1 and 2.

...
CORAM : A.A. SAYED, J.

DATED : 9 DECEMBER 2016

P.C.:

The Petitioner by this Petition under Article 226 and 227 of the Constitution, has impugned the order dated 16 June 2016 passed by the Education Officer (Secondary), Zilla Parishad, Kohlapur, whereby the proposal for the approval of the appointment of the Petitioner as Shikshan Sevak in the Respondent No.4-school is rejected.

2. The Petitioner belongs to open category and is M.A.B.Ed. On 6 August 2012, the Respondent-Management issued an advertisement in the newspaper inviting candidates for selection of one post of Shikshan Sevak. The Petitioner and three other candidates applied for the post and the Petitioner was selected by the Selection Committee and a Resolution was passed to appoint the Petitioner as Shikshan Sevak for three years. The

Petitioner was issued an appointment letter and she joined the Respondent No.4-school on 16 August 2012. On 6 January 2014, the Respondent No.3-Management submitted proposal to Respondent No.2-Education Officer and sought approval to the Petitioner's appointment. It came to be rejected by the impugned order on the ground that there is a backlog of reservation of 8 posts viz.- ST-2, VJ(A)-2, NT(B)-1, NT(D)-1, OBC-1 and SBC-1.

3. The issue in the Petition is whether the approval of the Petitioner who is from open category and appointed on an unreserved post can be rejected merely on the ground that there is a backlog of candidates of reserved category which has not been filled by the Management.

4. The Division Bench of this Court in **Smt. Hira Shivaji Khalche v/s. The State of Maharashtra and ors.** (Writ Petition No.4747 of 2005 and other connected Petitions) had an occasion to consider a somewhat similar issue, where the approval of the Petitioner therein was rejected on the ground that there was a backlog of reservation as per the roster register. The Division Bench concluded in paragraph 6 of the said judgment as under:

“6. In the light of that, the Management is directed to submit a fresh proposal for approval to the Education Officer. The Education Officer to work out the reserved quota at 34%. Accordingly, if there be vacant posts in open category to grant approval to the appointment of the Petitioners, if there be no backlog in reserved category.”

The aforesaid words “If there be no backlog in reserved category” was thereafter deleted by the Division Bench by order dated 23 September 2005 when the matter was moved for speaking to minutes.

5. A similar issue was also involved in **The President, Sudhagad Education Society v/s. The Dy. Director of Education & Anr.** (Writ Petition No.4635 of 2009 and another connected Petition), wherein the learned single Judge of this Court has specifically stated that “This Court in number of cases had directed the Deputy Director of Education not to refuse to grant approval only on the ground that the backlog of reserved category candidates was not filled in.” The learned single Judge has drawn support from the judgment of the Division Bench of this Court in **Smt. Hira Khalche** (supra). The judgment of the learned single Judge in **The President, Sudhagad Education Society** (supra) was challenged before the Division Bench of this Court by filing a Letters Patent Appeal (LPA)

No.63 of 2010 and accompanying LPAs, which was dismissed by the Division Bench by order dated 5 May 2010. The order of the Division Bench in LPA No.63 of 2010 was thereafter carried to the Supreme Court by filing a Special Leave Petition and the Supreme Court by an order dated 26 April 2011 dismissed the SLP, both on the grounds of delay and on merits. Another learned single Judge of this Court in the case of **Smt.Manisha Rajeshwar Deshmukh v/s. The State of Maharashtra and ors.** (Writ Petition No.7955 of 2011 and connected Writ Petition) has followed the judgment of the learned single Judge in the case of **The President, Sudhagad Education Society** (supra). The issue involved in the present Petition is squarely covered by the judgments referred to hereinabove.

6. Though in the Affidavit-in-Reply on behalf of the State Government, there is a mention in paragraph 6 about the Government Resolution dated 2 May 2012 and it has also been averred that recruitment to the post of teacher has been banned, the learned AGP has fairly stated before the Court that in the said Government Resolution there is nothing to show that there was a ban on recruitment to the post of teacher.

7. In the circumstances, the impugned order is not sustainable and deserves to be set aside and accordingly set aside. The Education Officer

is directed to grant approval to the appointment of the Petitioner as Shikshan Sevak and to release her salary within four weeks from the date when this order is uploaded. The learned Counsel for the Respondent-Management, on instructions from Shri Bandopant B.Wadakar- a member of the Managing Committee of the Respondent-Management states that the Management shall make all efforts to fill up all backlog of backward class candidates expeditiously and in accordance with law. The statement is accepted.

8. The Petition is allowed in the aforesaid terms.

9 All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J.)