

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9231 OF 2014

Dipak Sampat Patil & Anr.

.. Petitioners

V/s.

The State of Maharashtra & Anr.

.. Respondents

.....

Mr. N. V. Bandiwadekar, Advocate for the Petitioners.

Ms. Nisha Mehra, AGP for Respondent - State.

.....

**CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.**

DATED : DECEMBER 9, 2016.

P.C. :

Not on Board. Production of papers are allowed at
11.00 a.m.

2 Rule. Rule is made returnable forthwith. By consent
of the parties heard finally at the admission stage itself.

3 Parties through their counsel.

4 By filing this petition under Article 226 of the
Constitution of India, petitioners have challenged the order dated
18th January, 2014 Exhibit-I passed by the Education Officer,
(Secondary), Zilla Parishad, Ratnagiri, respondent no.2 herein

thereby rejecting the proposal for approval sent by the Head Master of the school where the petitioners are working, on the following grounds :

“(a) That no prior permission of the office of the Education Officer has been taken for issuance of advertisement for the appointment.

(b) The change report of the petitioner no.2 institution is not produced from the office of the Assistant Charity Commissioner, Ratnagiri and unless the said change report is received, the approval cannot be granted.

(c) There is delay in making the proposal for the approval.

(d) Petitioner no.1's appointment is not in accordance with the backlog of reservation.”

5 Having considered the submissions made by the learned counsel for the parties and having gone through the averments made in the petition, we find that so far as requirement of permission of the office of the Education Officer for issuance of advertisement, the same was not required when the petitioner was appointed i.e. on 2nd August, 2010. The said condition came into force vide GR dated 6th February, 2012 and

the said GR was made applicable prospectively and the petitioner's appointment being prior to issuance of the said GR, the same cannot be a ground to refuse the approval. The learned counsel for the petitioner submits that even otherwise, prior to issuance of the advertisement, an application was made by petitioner no.2 Institution on 15th May, 2010 for grant of permission to issue advertisement. Be that as it may, since the appointment was much prior to the coming into force of the GR, the reason no. 1 assigned in the order cannot be sustained.

6 In so far as non submission of the change report of the petitioner no.2 institution, we find that the Division Bench of this Court in Writ Petition No. 4474 of 2012 in the case of ***Dr.Ishrat Ullah Khan Vs. State of Maharashtra and Ors.*** decided on 13.2.2013 has clearly laid down that the Education Officer while considering the issue of approval is not required to go into the dispute *inter se* between the Management and he has only to see whether the person functioning as Head Master has been appointed in accordance with the law or not. Even otherwise, we find that Petitioner no.1 cannot be held liable for non production of the change report by the Institute.

7 So far as third ground is concerned, we find that for

the delay caused in making the proposal, petitioner no.1 cannot be punished.

8 As regards the reasons assigned for rejection on the fourth ground is concerned, we find that petitioner no.1 belongs to open category and was appointed also under the open category. However, this fact could have been examined by the Education officer. In view of the aforesaid, we set aside the impugned order dated 18th January, 2014 Exhibit-I and remit the matter back to respondent no.2 for passing a fresh order in the light of the observations made hereinabove. The decision aforesaid be taken by the respondent no.2 within a period of six weeks from the date of receipt of the copy of this order. Petitioner No.2 shall provide all necessary information to the Education Officer within two weeks from the date of receipt of the order.

9 Rule is made absolute in the aforesaid terms.

10 The Petition stands disposed of as such.

11 The parties to act on the authenticated copy of this order.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)