

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3719 OF 2016

1 Khushal S/o Sadashiv Medhe
Age: 23 years, Occu: service,
R/o At Post Ambedkar Nagar,
Faizpur, Tq. Yawal, Dist. Jalgaon

2 Aakash S/o Kailash Sali
Age: 24 years, occu: service,
R/o Shriram Peth, at post Faizpur
Tq. Yawal, Dist. Jalgaon

Petitioners

Versus

1 The State of Maharashtra
through Its Secretary,
School Education Department,
Mantralaya, Mumbai – 32

2 The Deputy Director of
Education, Nashik, Dist. Nashik

3 Education Officer (Secondary),
Zilla Parishad, Jalgaon

4 Municipal High School & Junior College
Faizpur, Tq. Yawal, Dist. Jalgaon
through Its President School Committee

5 Municipal High School & Junior College,
Faizpur, Tq. Yawal, Dist. Jalgaon
through Its Head Master

Respondents

Mrs. S.P. Mahajan advocate for the petitioners

Mrs. R.P. Gaur Assistant Government Pleader for Respondent Nos.1 to
3

Mr. R.S. Deshmukh advocate for respondent Nos.4 and 5

CORAM : R.M. BORDE &

P.R. BORA, JJ

(Date : 15TH March, 2017.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final disposal at admission stage.

3 The petitioners are praying for issuance of directions to respondent No.3 to consider the proposal for according approval to their appointment as Peons in the school, operated by respondent No.5 Municipal Council. The petitioners are also praying for issuance of direction to respondents No.4 and 5 to forward the proposal to respondent No.3 for according approval to their appointment.

4 The petitioner No.1 belongs to scheduled caste category whereas petitioner No.2 belongs to open category. They have been appointed as Peon in respondent No.5 school operated by respondent No.4 on 14.9.2015. According to the petitioners, their appointments have been made against clear vacancies and that

the Municipal School has complied with the requirements for filling up backlog vacancies. The proposal tendered by respondent No.4 school for according approval to their appointment has not been considered mainly on the ground that the appointments have been made during the operation of the ban in respect of making the appointment imposed by the State Government and secondly, no prior permission has been secured from the Committee under the Chairmanship of the Chief Executive Officer, Zilha Parishad, Jalgaon before making appointment of the petitioners.

5 Learned counsel appearing for the petitioners has invited our attention to the Government Resolution dated 20.6.2014 where under, the ban in respect of making appointment to the post of teachers and non-teaching staff imposed vide Govt. resolution dated 2.5.2012 has been lifted and the State Government has taken a decision to permit appointment of teachers and non-teaching staff as against the basic vacancies. The petitioners contend that, they have been appointed against the sanctioned posts and in observance of the procedure prescribed for making appointment of non-teaching staff.

6 Another objection raised, is in respect of not securing permission from the Committee before making appointment of the

petitioners. It is pointed out that, as many as eight communications have been issued from 20.3.2015 to December, 2015 by the President of the school Committee earlier, for permission before making appointment. However, none of the communications has been answered by respondents No.2 & 3. It is also not the case of the respondent Education Officer that the school was communicated list of surplus teachers and there was an insistence for accommodating surplus teachers by the Education Officer and that the Municipal Council has failed to abide by such instructions. On the contrary, the Education Officer never communicated list of surplus teachers, nor instructed the Municipal Council School to accommodate surplus teachers or non-teaching staff in the school. School Management Committee of respondent No.4 cannot be therefore blamed for violating the guidelines or the norms in respect of making appointment to the school operated by respondent No.4 municipal Council. In fact, it was open for the Education Officer to communicate the list of teaching or non-teaching staff for being accommodated against the existing vacancies in the school. In view of the failure of the Education Officer to follow the procedure, petitioners cannot be put to any disadvantageous situation. As has been recorded above, the school committee sought permission from the

respondents for making appointments against reserved vacancies. However, none of the applications tendered by the school committee since 2013 were attended by the respondents.

7 In this view of the matter, the directions, as requested by the petitioners for consideration of their proposal for according approval to their appointments, need to be issued. Respondent No.3 is directed to consider the proposal for according approval to the appointment of the petitioners and pass appropriate order, as expeditiously as possible and preferably within three months from today. The proposal shall not be rejected merely on the ground that no permission has been sought before making appointment or that the appointments are made during period of operation of ban. It would be open for respondent No.3 to examine as to whether the appointments of the petitioners are against existing vacancies and as to whether requirement of back-log has been fulfilled by respondent No.4 school.

8 Rule is made absolute to the extent specified above.

9 There shall be no order as to costs.

(P.R. BORA, J)

(R.M. BORDE, J)