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

WRIT PETITION NO.5796 OF 2006

- 1) Shivraj s/o Kondiram Dase,
Age 35 years, Occu. Service,
R/o C/o Basweshwar School,
Kumtha (Bk.), Tq. Ardhapur,
District Nanded.
- 2) Arvind s/o Rohidas Gavhane,
Age 32 years, Occupation &
R/o as above. ... PETITIONERS

VERSUS

- 1) The State of Maharashtra
through the Secretary,
Education Department,
Government of Maharashtra,
Mantralaya, Mumbai – 32
- 2) The Director of Education,
Secondary and Higher
Secondary, Pune,
Maharashtra State, Pune – 1
- 3) The Education Officer (Secondary)
Zilla Parishad, Nanded.
- 4) Head Master,
Basweshwar High School
Kumtha (Bk.),
Tq. Ardhapur, District Nanded
- 5) Shri Basweshwar Shikshan
Prasarak Mandal, Kumtha (Bk.),
Tq. Ardhapur, District Nanded ... RESPONDENTS

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Shri V.D. Salunke, Advocate for petitioner
Mrs. V.S. Choudhary, A.G.P. for State

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((2))

CORAM: P.B. VARALE AND
 SUNIL K. KOTWAL, JJ.

DATED : 6th DECEMBER, 2017.

ORAL JUDGMENT (PER P.B. VARALE, J.):

1. Heard Mr. Salunke, learned counsel for the petitioners. The petitioners before us namely Mr. Shivraj Kondiram Dase and Arvind Rohidas Gavhane, by the present petition, seek directions to grant approval for the post of Peon on grant-in-aid basis in respondent No.4 School.

2. The facts which are not in dispute, as submitted by Mr. Salunke, learned counsel for the petitioners are that, the petitioner No.1 Shivraj Dase was appointed on 1.11.1997 and his appointment came to be approved after completing the probation period. Petitioner No.2 Arvind Rohidas Gavhane was appointed on 1.1.2000. The petitioners were appointed in the Primary School i.e. 5th to 7th Standard. The appointment orders of these petitioners respectively dated 1.8.2002 and 6.8.2002 are placed on record at Exhibit D. Mr. Salunke, the learned counsel, by inviting our attention to a document placed on record at Page 45, namely the staffing pattern and the position at which these petitioners are placed, submitted that, the approval to these posts was not granted treating them as the persons attached to non-grant educational institutes. Mr. Salunke then submitted

that, though on principle there was no denial from the office of the Education Officer (Secondary), but for the ground that the Education Officer (Secondary), was not possessing the powers to grant approval to the post. The representation made to the Education Officer was turned down by order dated 22.3.2004.

3. Mr. Salunke, the learned counsel appearing for the petitioners, by inviting our attention to Exhibit I i.e. judgment and order of the Division Bench of this Court in Writ Petition No.2234/2004, submitted that, in an identical fact situation, this Court dealt with the issue and allowed the petition. He then submitted that, the view of this Court in the case of **Maroti Atmaram Gawandgaonkar & ors. Vs. The State of Maharashtra & ors. (Writ petition No.2234/2004), decided on 27.4.2006**, is reiterated and reaffirmed in a bunch of petitions, decided on 6.5.2014. The denial of the claim of the petitioners, relying on the Government Resolution dated 26.3.2002 was unsustainable. Mr. Salunke invited our attention to paragraph 6 of the judgment in the bunch of petitions, namely Writ Petition No.3700/2012 with other connected writ petitions. The observations of this Court read thus :

6. This Court, in almost similar fact situation wherein grant-in-aid was sanctioned to 5th to 7th classes of the concerned institution / school, after considering the Government Resolution dated 26th March, 2002 held

that in the facts of that case, the schools started receiving grant-in-aid after said resolution came into force and since the date of sanctioning grant-in-aid, the approval has been granted to the teaching staff and, therefore, there was no reason for not granting approval to non-teaching staff i.e. two posts of peons and allowed the petition and directed the State Government to grant approval to the services of the petitioners therein, who were working as peons. The relevant para no.5 from the judgment in case of **Maroti s/o Atmaram Gawandgaonkar and others v/s The State of Maharashtra and ors. In Writ Petition No.2234 of 2004 decided on 27.4.2006** reads, thus:

“ 5. The facts of the present case clearly reveal that the appointment of the petitioners were approved by the Education Officer. The petitioners came to be appointed on the two posts of Peons which came into existence on account of the approved staffing pattern because of permission granted to the school to start standards 5th, 6th and 7th. Standards 5th, 6th and 7th were on no grant basis and gradually in a phased manner the standards 5th, 6th and 7th have been held admissible to grants and since over more than 10 years. Moreover, the proposals submitted by the Management for grant of approval to the appointment of the petitioner on grant-in-aid basis were pending before the Education Officer for a long time. Also, by the communication at Annexure R-3 dated 18th July, 2005, the Education Officer, Z.P. Nanded, himself, recommended to the Deputy Director of

Education, Latur, that two posts of peons be sanctioned on grant-in-aid basis in Jagruti Vidyalaya for the 5th to 7th Standards. If that be the case, there is no justifiable reason on law, at least none has been put forth before us, for not holding the posts held by the petitioners as admissible to grants. It is not disputed before us that standards 5th, 6th and 7th were sanctioned on no grant basis and the appointment of the petitioners was approved on no grant basis. It is also not disputed before us that standards 5th, 6th and 7th have now been held to be admissible to grants in a phased manner. In the light of these undisputed facts, according to us, the petition deserves to succeed. Accordingly, Rule is made absolute in terms of prayer clauses (B), (C) and (D). In the circumstances of the case there will be no order as to costs.”

4. Learned A.G.P. invited our attention to a communication received by her. The said communication is a letter addressed to the respondent No.4. By way of the said communication, the Education Officer (Secondary), Zilla Parishad, Nanded informs that, in view of the order passed by the Presiding Officer, School Tribunal, dated 29.2.2008, and in view of certain other communications, the approval is granted to the appointment of Mr. Shivraj Kondiram Dase, his continuity in service from 1.11.1999 is also admitted. It is then stated in the communication that the classes of Standards 5th to 7th are

brought on 100% grant stagewise. Then the communication refers to the decision of the Presiding Officer, School Tribunal. It states that, the learned Presiding Officer, School Tribunal directed the respondents to grant all the benefits to the appellants within a stipulated period of 30 days including the reinstatement of these petitioners. The Education Officer then states that, a decision is accordingly taken to allow 100% salary bills in case of Mr. Shivraj Kondiram Dase. Similar communication is in respect of other petitioner Mr. Arvind Rohidas Gavhane. Copies of these communications are taken on record and marked "X" for identification.

5. In view of the communications, the grievance of the petitioners in respect of payment of salary on 100% basis, working as an employee in grant-in-aid institution, is redressed. Insofar as granting of approval is concerned, the respondent authorities to take necessary decision in view of the judgment of this Court referred above, as expeditiously as possible. The petition is disposed of. Rule is accordingly made absolute in above terms.

(SUNIL K. KOTWAL)
JUDGE

(P.B. VARALE)
JUDGE

fmp/