

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

Writ Petition No. 06311 of 2016

District : Latur

Dhanraj s/o. Prasad Swami,
Age : 32 years,
Occupation : Service,
R/o. Veer Hanumantwadi,
Padmavati Apartment,
Latur,
Taluka & District Latur.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Secretary,
School Education and
Sports Department,
Mantralaya, Mumbai - 32.
2. The Education Officer
(Secondary),
Zilla Parishad, Latur.
3. Dr. Madusudan Bangad Vidyalaya,
Through its Headmaster,
Anjansonda (B.),
Taluka Chakur,
District Latur.
4. The Saraswati Vidya Prasarak
Mandal,
Through its Secretary,
Anjansonda (B.),
Taluka Chakur,
District Latur.
5. Surekha d/o. Raosaheb Chavan,
Age : Major,
Occupation : Nil,
R/o. Anjansonda (B.),
Taluka Chakur,
District Latur.

.. Respondents.

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Mr. M.V. Ghatge, Advocate, for the petitioner.

Mr. N.T. Bhagat, Asst. Government Pleader, for respondent nos.01 and 02.

Mr. S.P. Katneshwarkar, Advocate, for respondent nos.03 and 04.

Respondent no.05 served (Absent).

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 08TH MARCH 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The petitioner is aggrieved by the order dated 20.02.2016, passed by respondent no.02 - Education Officer (Secondary), by which, he has declined to grant approval to the appointment of the petitioner.

03. I have considered the submissions of Shri Ghatge, learned Advocate for the petitioner, learned Asst. Government Pleader appearing on behalf of respondent nos.01 & 02 and Shri Katneshwarkar, learned Advocate appearing on behalf of respondent nos.03 and 04.

04. Despite service of Court notice, none has caused an appearance on behalf of respondent no.05.

05. I have considered the record available with the assistance of the learned Advocates.

06. It is undisputed that the management sought permission by its letter dated 22.05.2013 from respondent no.02 - Education Officer to publish an advertisement for filling in certain posts. By communication dated 12.07.2013, respondent no.02 allowed the management to proceed to recruit one Shikshan Sevak by taking care of the backlog. After receiving the said permission, the management has published the advertisement calling for applications for recruiting Shikshan Sevaks in the respondent no.03 - School. One post of Shikshan Sevak, requiring qualifications of B.A.,B.Ed. in English subject, was reserved for Other Backward Class category. For the said post, qualification of M.A. (English) was mandatory. The second post of Shikshan Sevak, requiring qualifications of H.S.C., D.Ed., was reserved for Scheduled Tribe category.

07. The minutes of the selection process are placed on record. The petitioner was selected as Shikshan Sevak as against the post reserved for the O.B.C. category. He has the requisite qualifications and belongs to O.B.C.

08. Respondent no.05 herein, who belongs to the open category, is said to have laid a claim for approval in place of the petitioner. Despite being served with Court notice, respondent no.05 has chosen

to remain away from these proceedings by not causing an appearance either through an Advocate or in person.

09. There is no dispute that the petitioner has been working from 02.08.2013 on the post of Shikshan Sevak. Shri Katneshwarkar confirms that the petitioner has been working from 02.08.2013 after he joined the employment.

10. It is evident that the petitioner was served with the appointment order dated 29.07.2013 as a Shikshan Sevak. He has submitted his joining report on 02.08.2013 and since then he is working on the said post.

11. It is equally undisputed that a proposal dated 23.04.2014 was forwarded by the Head Master to the Education Officer seeking approval to the appointment of the petitioner. A reminder was again sent on 29.10.2014. Yet another reminder was submitted on 26.12.2014. There are several documents placed on record indicating that the petitioner has been discharging his duties from 02.08.2013.

12. By the impugned cryptic order dated 20.02.2016, respondent no.02 has refused to grant approval to the appointment of the petitioner. It is apparent that the said Education Officer - Dr. Ganpat More has not applied his mind to the facts of this case and by putting forth a spacious plea that there

is a backlog of reserved category posts, he has held that the appointment of the petitioner cannot be granted approval.

13. It appears that he has taken up two cases for grant of approval together. The first case is of the petitioner and the second case is of Ms. Surekha d/o. Raosaheb Chavan, who is respondent no.05 herein. She belongs to the open category. Apparently from the record, there was no permission granted by the Education Officer to the management to fill in any post of Shikshan Sevak from the open category.

14. The advertisement dated 24.07.2013 published in newspaper '*Dainik Prativyavhar*' placed on record indicates that one post of Shikshan Sevak was reserved for the O.B.C. category and one post was reserved for the Scheduled Tribe category. Respondent no.05, therefore, could not have been appointed, much less in place of the petitioner. As such, her claim in juxtaposition with the petitioner, cannot be considered as the petitioner clearly falls in the O.B.C. category and respondent no.05 falls in the open category.

15. In passing a cryptic order, not only respondent no.02 - Education Officer, Dr. Ganpat More failed in applying his mind, but he has also failed in assigning justifiable reasons for rejecting the proposal of the petitioner. Prima facie, his decision to reject the proposal of respondent no.05 -

Ms. Surekha Chavan may not appear to be unsustainable.

16. It also cannot be ignored that the respondent no.02 has decided the proposal of the petitioner after 01 year and 10 months. He has taken 22 months to decide the proposal.

17. It also cannot be ignored that respondent no.02 - Education Officer has not filed an affidavit in reply and has deputed the Office Superintendent to do his job. The said reply by the Office Superintendent is filed on 03.02.2017.

18. From the reply, it is evident that the Education Department accepts that one vacant post for O.B.C. category was available. Proposal of two employees were sent and hence both the proposals were rejected. It, therefore, conclusively proves that the Education Officer was aware that the petitioner belongs to the O.B.C. category; the post occupied by him was reserved for O.B.C. category and there was no legal impediment in sanctioning the approval.

19. In the light of the above, this Petition is allowed. The impugned order dated 20.02.2016 is quashed and set aside. Respondent no.02 - Education Officer (Secondary) is directed to accord approval to the appointment of the petitioner as a Shikshan Sevak from 02.08.2013, within a period of two weeks from today.

20. Having considered the conduct of the Education Officer (Secondary), namely Dr. Ganpat More, as noted in the forgoing paragraphs and considering his affidavit which indicates that he was fully conscious of the rightful claim of the petitioner and yet rejected the approval proposal, I deem this case to be fit for imposing costs upon the said Education Officer. It is informed by the petitioner, that the said Education Officer - Dr. Ganpat More has been penalized in earlier proceedings in Writ Petition No. 7584 of 2013, vide order dated 03.03.2017.

21. Learned Advocate for the petitioner submits that costs may be donated to the Advocates' Association.

22. Hence, respondent no.02 - Education Officer (Secondary), namely Dr. Ganpat More, shall deposit Rs. 10,000/- [Rupees ten thousand] with the Advocates' Association of Bombay High Court, at Aurangabad, from his salary account, within a period of two weeks from today.

23. Rule is made absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

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