

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8958 OF 2016

1 Hitendra s/o Darbarsing Patil
age 32 years, occ. Service
r/o At Post Yawal, Tq. Yawal
Dist. Jalgaon

2 Ganesh s/o Balu Patil
age 34 years, occ. Service
r/o At Post Yawal, Tq. Yawal
Dist. Jalgaon

3 Bhupendra s/o Dinkar Rane
age 31 years, occ. Service
r/o At Post Yawal, Tq. Yawal
Dist. Jalgaon

Petitioners

Versus

1 The State of Maharashtra
Through its Secretary
Municipal Administration Department,
Mantralaya, Mumbai 32.

2 The Deputy Director of Education
Nashik Division, Nashik.

3 The Education Officer (Secondary)
Zilla Parishad, Jalgaon

4 The Chief Officer,
Yawal Nagar Parishad,
Yawal, Tq. Yawal,
Dist. Jalgaon

5 Yawal Nagar Parishad's
Sane Guruji Secondary and
Higher Secondary School,
Yawal, Tq. Yawal, Dist. Jalgaon
Through its Chairman

6 The President, School Committee,

Sane Guruji Secondary and
Higher Secondary School
Yawal, Tq. Yawal,
Dist. Jalgaon

7 The Head Master
Sane Guruji Secondary and
Higher Secondary School,
Yawal, Tq. Yawal
Dist. Jalgaon

Respondents

Mr. V.J. Dixit, Senior Counsel i/ by Mr. Y.B. Bolkar, advocate for petitioners.

Mr. V.S. Badakh, AGP for respondents 1 to 3.

Mr. N.S. Tekale, advocate for respondents 4 and 6.

Mr. N.R. Dayama, advocate for respondents 5 and 7.

**CORAM : R.M.BORDE AND
A.M.DHAVAL, JJ.
DATE : 27th July, 2017.**

ORAL JUDGMENT (Per R.M.Borde, J.) :

1 Petitioners are assailing the order dated 20/28.06.2016, passed by the Deputy Director of Education, Nasik Division, Nasik, refusing to accord approval to the appointment of petitioners, made by the Respondent-Institution in the year 2013.

2 In the impugned order, it is recorded by the Deputy Director of Education that the Institution did not obtain no objection of the Committee constituted in observance of the Government Resolution dated 19.07.2014. The objection in respect of absorption of surplus teachers has also been raised in the impugned order. It is further recorded that while making appointments, it was incumbent upon the Management to take into consideration the revised roster prepared on 21.06.2011.

3 The petitioners contend that the Management had approached the Deputy Director of Education seeking permission to accord approval for issuing advertisements on 17.09.2012, 21.12.2012 and 15.05.2013, however, applications tendered by the Institution were not considered and there was no communication issued by the office of Deputy Director of Education either according approval for publication of advertisement or refusing request of the Management. It is further pointed out that the appointments have been made by the Management in observance of the reservation policy and there is no backlog in respect of reserved category employees in the Institution. This aspect has not been controverted by the respondents. It is further specifically informed by the Deputy Director of Education, in his communication dated 24.07.2017, addressed to the Assistant Government Pleader that the contention of the petitioners, that the Management has appointed petitioners as per the backlog and roster, is correct. It is further informed that there are no surplus teachers of Junior College remained to be absorbed in Nasik region and as such, objection raised by the Deputy Director of Education in respect of absorption of surplus teachers does not survive. The ground for refusal to accord approval i.e. the management has not secured no objection from the Committee also does not survive for the reason that the Management has in fact approached the Deputy Director of Education, however, there was no response from the concerned office. Even otherwise, the substantial objection in respect of filling up backlog vacancies by absorption of surplus teachers does not hold good and as such, action of the Management in making appointment of petitioners cannot be

faulted.

4 In view of above, order passed by the Deputy Director of Education, Nasik Division, Nasik dated 20/28.06.2016, stands quashed and set aside. The matter stands remitted back to the Deputy Director of Education for reconsideration. Since it is noticed that the Management has removed all the deficiencies, the Deputy Director of Education is directed to accord approval to the appointment of petitioners, as expeditiously as possible, preferably within a period of three months from today.

5 Learned Counsel for the Management, on instructions, informs that since appointments of the petitioners were terminated only on the ground of refusal to accord approval to their appointments by the Deputy Director of Education, the orders of termination would be recalled and petitioners would be absorbed in service. In view of the statement made above, on behalf of the Management, no orders as regards absorption of the petitioners and setting aside the order of termination, need be issued.

6 Rule is accordingly made absolute. There shall be no order as to costs.

A.M.DHAVAL
JUDGE

adb/wp8958.16

R.M.BORDE
JUDGE