

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 847 OF 2016

Jai Malhar Shikshan Prasarak Mandal

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri V. D. Hon, Senior Advocate a/w Shri U. B. Bilolikar h/f
Shri A. V. Hon, Advocate for the Petitioner.

Shri S. W. Mundhe, A. G. P. for Respondent Nos. 1 to 4.

Shri A. B. Shinde, Advocate for Respondent Nos. 5 and 6.

CORAM : **S. V. GANGAPURWALA &**
MANGESH S. PATIL, JJ.

DATE : **28th September, 2017**

PER COURT :

1. The proposal seeking approval to the appointment of present respondent Nos. 5 and 6 is negatived, aggrieved thereby the present writ petition.

2. Mr. Hon, learned Senior Advocate for the petitioner submits that the respondent Nos. 5 and 6 are appointed by following due procedure of law in the year 2005. Since 2005 to 2010 their appointments are approved by the respondent, however, subsequently there approval is rejected. These respondent Nos. 5 and 6 have resigned in the year 2012. The question is about their approval from 2010-2012. The learned Senior Advocate submits that, respondent Nos. 5 and 6 are also

from reserved category, one is from N.T. and another from O.B.C. category. Learned Senior Advocate however submits that, as far as post of reserved category candidates are concerned the Management undertakes to fill the said backlog by taking appropriate steps. Even if, they are considered from open category the posts were available for open category. According to the learned Senior Advocate the posts being vacant their services are required to be approved.

3. The learned counsel for respondent Nos. 5 and 6 submits that, these respondents have resigned in the year – 2012, however, they have not received the salary as per the directions of the court. In case, their proposal are not approved then, the Management is required to pay the said salary as per the order of this court dated 27.1.2015 in Writ Petition No. 2020 of 2013.

4. The learned A. G. P. submits that as there was backlog of reserved category candidates the approval is rightly rejected.

5. We have considered the submissions.

6. The Management has undertaken to till in the backlog of reserved category candidates. The said statement is accepted.

7. The approval is rejected only on the ground that these respondent Nos. 5 and 6 are from open category and there is a backlog of reserved category candidates. In the earlier approval orders the caste of these respondent Nos. 5 and 6 is stated one as

from 'Dhangar' caste and another from 'Hatkar' caste i.e. O.B.C. and N.T.

8. The factor which the respondent – Authority is required to consider is availability of the posts. The posts will have to be considered for the period 2010 – 2012.

9. Considering the aforesaid, we pass the following order.

ORDER

I] The impugned order is quashed and set aside.

II] The respondent – Authority shall decide the proposal seeking approval to the appointment of respondent Nos. 5 and 6 afresh and shall not reject it only on the ground of backlog of reserved category candidates.

III] The petitioner may represent itself before the Authority and clarify its stand with regard to respondent Nos. 5 and 6. The petitioner may appear before the respondent – Authority on 13th October, 2017.

IV] The Authority shall take decision afresh on its own merits on the said proposals expeditiously and preferably within 2 months from the date of appearance of the petitioner.

10. The writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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