

Hanumant Vitthal Kale	}	Petitioner
versus		
State of Maharashtra	}	
and Ors.	}	Respondents

Mr. A. S. Kalekar for respondent nos. 4 and 5.

DATED :- OCTOBER 11, 2017

1. Pursuant to our earlier orders and directions, an additional affidavit has been filed by the State.

2. Mr. Samant learned AGP appearing for the State would submit that consistent with the stand in the earlier affidavit in reply of 24th April, 2014, the Education Officer (Secondary), Zilla Parishad, Solapur has expressed his inability to grant approval to the appointment of the petitioner as a peon. The appointment was made when there was a ban on recruitment of non-teaching staff. It is stated that the ban is operative since 10th June, 2010.

3. Mr. Samant would rely upon the affidavit in reply of the Management to urge that admittedly, the advertisement was published in the local newspaper on 14th July, 2011, interviews were held on 31st July, 2011 and the petitioner was selected and an appointment order on probation was issued on 2nd September, 2011. In the event the Education Officer approves such an appointment, he would face disciplinary action and may also be proceeded against in a criminal court. Hence, it is not possible for him to act in terms of our orders and directions issued earlier.

4. The State Government has, in the earlier affidavit, stated that as per Government Resolution dated 10th June, 2010, guidelines for appointment of non-teaching staff for the Government aided private Secondary, Higher Secondary schools have been issued. As per the said guidelines, the State Government has banned appointment of non-teaching staff in categories 'C' and 'D' for private aided Secondary and Higher Secondary schools. Initially, this ban was for a period of one year and later on, another Government Resolution dated 16th July, 2011 extended this ban in respect of the appointment of non-teaching staff in categories 'C' and 'D' for another year from 16th July, 2011. Thereafter, the Government has issued a Government Resolution dated 20th June, 2014, pursuant to

which, the Education Officer has to be approached by individual Management and the proposal seeking his permission to appoint teaching and non-teaching staff has to be scrutinised by the Education Officer. The Management has not abided by any of the above stipulations and even though they have sent proposals to the Education Officer, the same have not been approved by him. There are several teachers on the surplus list and the Government has banned appointment of teaching and non-teaching staff till 100% absorption of surplus teachers as per the Government Resolution dated 2nd May, 2012. Despite this, according to Mr. Samant, some Managements have made appointments, which include the appointment of the petitioner. In the circumstances, he would submit that this court could not compel the Education Officer to approve the appointment of the petitioner.

5. We thought we would not be required to pass a fairly detailed and reasoned order, as the petitioner belongs to a Scheduled Tribe category. All that the Management has done is to appoint him against a vacant and sanctioned post reserved for Scheduled Tribe category. The appointment is as a peon.

6. In view of the stand of the Government, we would now have to refer to some documents, contents of which are not in dispute.

7. The petitioner has, in the writ petition, specifically stated that he belongs to Scheduled Tribe and relies upon the documents Annexure 'A' (collectively). The fourth respondent Trust is running a Secondary and Higher Secondary school in Solapur city. That is a 100% aided school. For the academic year 2011-12, there were 15 sanctioned posts of teachers and 5 of non-teaching staff. Annexure 'B' is relied upon in that behalf. Since there were vacancies during the academic year, a public advertisement was issued in a newspaper calling upon eligible candidates for an interview for the two posts of teaching staff and one post of peon.

8. The petitioner applied for the post and along with other candidates, he was interviewed. Since he was found eligible, the Selection Committee recommended him for appointment. Thereafter, on 2nd September, 2011, the appointment order has been issued and the petitioner is working since then.

9. The cause of action for the present petitioner arose when on 29th March, 2012, a proposal for approving the appointment of the petitioner was forwarded by the Management. All the documents were submitted. The petitioner came to know that the Management's proposal to appoint one teacher Kum. S. H. Shrigondekar was only approved. However, no approval has been

granted in relation to other posts filled up by the Management. The petitioner has been working and his complaint is that he cannot be faulted for he presumed that all approvals and sanctions have been granted. The petitioner has then pointed out that the Management's proposal has not been granted relying upon the Government Resolutions, to which we have made a reference above. The petitioner, *inter alia*, refers to a Government Resolution dated 4th September, 2013. That is on the subject of the ban imposed on recruitments/appointments in 100% Government aided Secondary and Higher Secondary schools. This Government Resolution is of 4th September, 2013 and it is stated that the same refers to the Government Resolution dated 2nd May, 2012 and not to the Government Resolution dated 10th June, 2010.

10. We have, with the assistance of the learned AGP, perused this Government Resolution of 10th June, 2010. The preamble to this Government Resolution states that after 5th June, 2010, the Government has imposed ban on appointment/recruitment of candidates for filling up Group 'C' and Group 'D' posts. That is why the ban, which is in force, does not include those posts which have been enumerated in clauses 1 and 2 and equally clause 3 of the said Government Resolution. That states that those Group 'C' and

Group 'D' staff, who have been rendered surplus and who have to be accommodated in terms of the applicable law, stand excluded and their absorption in some other schools would not be affected by the same. Then, on 16th July, 2011, another Government Resolution has been issued on the subject and in respect of the recognised private schools, which are partly or fully aided, which include the Secondary and Higher Secondary schools, the Government was contemplating extending this ban. The said ban was extended on 16th July, 2011 for a further period of one year, after which, the same is lifted and that is how even in this Government Resolution, there is a reference made to a Government Resolution of 1st October, 2003 and if any appointment has been made to the post of Safai Kamgar, then, that would not be covered by this ban.

11. On 20th June, 2014, the Government had issued a further Government Resolution on this subject and it refers to all the earlier steps. It also refers to the duties and obligations of the Education Officer. Mr. Samant would submit that it is this Government Resolution and the Government Resolution of 2nd May, 2012 which present difficulties for the Education Officer in this case to approve the appointment of the petitioner.

12. We have found and pertinently from the said Government Resolutions that they set out certain guidelines. There were complaints of inflating the number of students and preparing bogus attendance register and thereafter extorting funds meant as Government aid for educational institutions. Therefore, the Government had to take strict measures and we can appreciate and understand such measures and none would therefore interfere with it. This court rather insisted on such measure being taken to its logical end. However, we do not think that in the cases of the present nature and when there is a specific statement made in the affidavit of the Management that the advertisement for filling up the posts, which included the post of peon, on which the petitioner was eventually appointed, has been approved. Once, despite the strict measures initiated against bogus schools did not prevent the Government from taking up individual cases, then, we do not see any impediment for the petitioner's appointment being approved and as an isolated case. It is clear that the appointment process commenced after the advertisement was inserted. The petitioner has been working from 2nd September, 2011. If the Management's proposal dated 29th March, 2012 was forwarded, the State Government, namely, the Education Officer was not prevented or prohibited from seeking appropriate details and if we find that the concerned post

was vacant since March, 2007, then, it is not too much to expect from the Education Officer, if he approves the appointment of a peon. Eventually, the Secondary and Higher Secondary School has done nothing beyond filling up the vacant post. The petitioner has been appointed as a peon. The refusal ought to have been communicated and with reasons. Today, when the petitioner has approached this court because the Management has informed him vide page 35 that up till date of that document/communication dated 9th February, 2014, the approval has not been granted by the State, then, it is evident that there is no application of mind by the Education Officer (Secondary) till date. It is presuming that such an appointment and made to the post of a peon is incapable of being approved that the whole writ petition is contested.

13. We do not think that the ban was so absolute, as is now urged, that it was impossible for any Management to appoint a peon. If the peon could be appointed and his/her services have been utilised from 2nd September, 2011 till date, then, it is not just, fair and proper to deny the approval. The petitioner has been working and to the satisfaction of all concerned. There have been no complaint. Secondly, the subsequent documents, which have been brought to our notice by Mr. Samant, enable the

Government to relax, in appropriate and deserving cases, the conditions, from which the ban on recruitment and appointment has been culled out. If this can be relaxed in the case of teachers and one of the Government Resolution being composite in nature and making reference to both teaching and non-teaching staff appointments, then, as an exception and without the direction being treated as a precedent in any case, we expect the Education Officer (Secondary) to consider the proposal of the Management to approve the appointment of the petitioner. He should consider it without being influenced by any of the statements made in the affidavits in reply. He should take a informed and rationale decision. We do not think that any penal or disciplinary proceedings can be initiated if the Education Officer (Secondary) acts in furtherance of and implements the directions of this court. The Education Officer (Secondary) should take a decision as expeditiously as possible and within a period of four weeks from the date of receipt of a copy of this order.

14. We hope and trust that he would take a decision consistent with the requirements of the Management of a peon and secondly, that the petitioner, as belonging to the Scheduled Tribe, has been appointed pursuant to an advertisement, the draft of which was duly approved and thirdly, there has not been any illegality noted

in the appointment. There was an advertisement issued, applications were invited from all interested parties, interviews were held by the duly constituted committee and thereafter, the appointment order was issued. Initially the appointment was on probation. All these facts and circumstances being undisputed, a definite exception can be made in the case of the petitioner. We do not think that the Department of Higher Education, to which the Education Officer (Secondary) reports, would take any punitive measure, much less disciplinary action and criminal prosecution in the event the Education Officer (Secondary) approves the appointment of the petitioner.

15. Needless to clarify that in the event the approval is granted, that order and direction shall not be treated as a precedent in any future cases or cases of the other Management even in the Solapur district.

16. With the aforesaid directions, the writ petition is disposed of.

17. The parties to act on an authenticated copy of the order.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)