

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4120 OF 2016

Purushottam H. Shirsekar and Others ...Petitioners
vs.
The State of Maharashtra and Another ...Respondents

Mr. N.V. Bandiwadekar a/w. Mr. S.A. Mane, for the Petitioners
Mrs. R.M. Shinde, AGP for the Respondents-State.

CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.

DATE : **FEBRUARY 28, 2017**

P.C.:

. With the consent of the parties, heard finally and disposed
of at the stage of admission.

2. The Petitioner No. 1 is working as a part time Assistant
Teacher in the school run by the Petitioner No. 2. The Petitioner No. 2
submitted a proposal dated 30th December, 2015 (Exhibit N) to
Respondent No. 2 – Education Officer (Secondary), Zilla Parishad,
Ratnagiri for granting approval of the Petitioner No. 1 as full time
Assistant Teacher. It was stated in the said proposal that in view of the
retirement of two Assistant Teachers, the Petitioner No. 1 being

already working as part time Assistant Teacher and being qualified deserves to be upgraded as full time Assistant Teacher in view of the Government Resolutions dated 31st January, 2001 and 10th June, 2005 (Exhibit O colly.).

3. However, the Education Officer rejected the said proposal sent by the Petitioner No. 2 on the ground that for making appointment as Assistant Teacher there is ban imposed by the State Government under Government Resolution dated 2nd May, 2012. Feeling aggrieved the Petitioners have filed this Petition.

4. According to the learned counsel for the Petitioners the Government Resolution dated 2nd May, 2012 has got no applicability to the facts of this case. He submits that the said Government Resolution prohibits the fresh appointment whereas the Petitioner No. 2 had sent the proposal for approval of the Petitioner No. 1 who was already working as part time Assistant Teacher as full time Assistant Teacher on the basis of Government Resolutions dated 31st January, 2001 and 10th June, 2005 (Exhibit O colly.) and hence the impugned order of the Education Officer is liable to be quashed.

5. In support of his submissions the learned counsel for the Petitioners has placed reliance on the various orders passed by this Court including :-

(1) Chhagan Natha Rajapure vs. The State of Maharashtra & Ors., Writ Petition No. 6907 of 2011, dated 19th December, 2011.

(2) Uddhav Trimbak Umbare vs. The State of Maharashtra & Ors., Writ Petition No. 9398 of 2012, dated 1st February, 2013.

(3) Kalbhairav Shikshan Sanstha and Anr. vs. The State of Maharashtra & Anr., Writ Petition No. 10510 of 2014, dated 21st April, 2015.

6. On the other hand, the learned AGP submits that the order passed by the Education Officer being in conformity with the Government Resolution dated 2nd May, 2012 imposing ban on the recruitment, the Petition is having no merits and the same may be dismissed.

7. We have considered the submissions made by the learned counsel for the parties. We have also gone through the various orders cited above.

8. Having gone through the aforesaid orders and the Government Resolutions referred above, we find that the Petitioner No. 2 had made proposal for approval of Petitioner No. 1 as full time Assistant Teacher as he was already in service since 2001. The Government Resolution dated 2nd May, 2012 on which the Respondents have placed reliance is about ban on the fresh appointments. By no stretch of imagination, it can be said that the Petitioner No. 2 wanted approval of the Petitioner No. 1 for being appointed as fresh Assistant Teacher. Undoubtedly the Petitioner No. 1 is already in service and the proposal was in regard to his upgradation as full time Assistant Teacher in view of the Resolution dated 31st January, 2001 and 10th June, 2005. In these circumstances, in view of the undisputed fact that the Petitioner being qualified for holding the post of full time Assistant Teacher, the order of Respondent No. 2 – Education Officer can not be sustained and the same is, therefore quashed.

9. The Petition is allowed in terms of prayer clause (b).

10. No order as to the costs.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)