

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3916 OF 2017

Smt. Vijayalaxmi Somugopal
Mehetre & Anr.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. N.V. Bandiwadekar with Mr. S.A. Mane i/b. Mr. Mandar
Bagkar for the Petitioners.

Mrs. Rupali Shinde, AGP for the Respondent Nos.1 and 2.

CORAM : B.R. GAVAI &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 4th OCTOBER, 2017.

P.C.:-

Rule. Rule is made returnable forthwith. The Respondents waive service. Heard by consent of parties.

2. The Petitioner approached this Court praying for writ of mandamus directing the Respondent No.2 to grant approval to the appointment of Petitioner No.1 as 'Shikshan Sevak' w.e.f. 17th June, 2013 and thereafter to grant further approval as Assistant Teacher.

3. The Petitioner No.1 came to be appointed by the Petitioner No.2 as Shikshan Sevak w.e.f. 17th June, 2013 against the seat reserved

for physically handicapped person. The Petitioner No.2 after the appointment submitted a proposal to the Respondent for grant of approval. However, the Petitioners were informed that the approval cannot be granted since appointment was made after 2.5.2012 i.e. the date on which the Petitioner was appointed as Shikshan Sevak. Hence this Petition.

4. The Division Bench of this Court to which one of us is Member, vide judgment and order dated 10th July, 2017 has held that the appointments, which are made for fulfilling the backlog of backward class candidates would not be governed by Government Resolution dated 2.5.2012. It will also be seen that the Division Bench of this Court in Writ Petition No.10580 of 2015 alongwith companion matters vide judgment and order dated 9th March, 2017 has held that the ban which was imposed by Government Resolution dated 2.5.2012 could not apply for reservation category after following due procedure of law.

5. It is to be noted that the reservation to the persons with physical disability is required to be provided as per the central enactment i.e. Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation Act, 1955). Not only this the State of Maharashtra itself has vide Government Resolution dated 20.1.2011 provided for 3% of reservation for the said category.

6. In the reply filed on behalf of the State it is submitted that the Government Resolution dated 21.1.2011 issued by Higher and Technical Education Department and not binding on the School Education Department. The stand taken by the State Government is required to be rejected outright. When Central enactment itself mandates reservation to be provided for the persons with physical disability, the Government is bound to provide such a reservation.

7. Apart from that the State Government acts as one State Government for all departments and does not act as different government for different departments.

8. In that view of the matter, it is mandatory on the part of the State Government to provide reservation for physical disable persons. In view of the view taken by the various Division Benches of this Court, we are of the considered view that the ban imposed by Government Resolution dated 2.5.2012 would not be applicable to the Petitioner

No.1, on account of which approval was not granted to the appointment of the Petitioner. Rule is made absolute in following terms :

9. The Respondents are directed to grant approval to the appointment of the Petitioner as Shikshan Sevak w.e.f. 17.2.2013 and grant of approval to the Petitioner as an Assistant Teacher after completion of three years period of Shikshan Sevak. The Petitioner shall be paid regular salary from the month of November-2017 and all arrears of the honorarium as well as the salary shall be cleared within a period of three months from today.

10. No order as to costs.

(ANUJA PRABHUDESSAI, J.)

(B.R GAVAI, J.)