

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.372 OF 2018

- 1) Angad s/o Kishanrao Tandale,
Age-46 years, Occu:Service as
Shikshan Sevak, R/o-Gawali Nagar,
Latur, Tq. & Dist-Latur,
- 2) Jaishree D/o Anil Kadam,
Age-30 years, Occu:Service as
Shikshan Sevak, R/o-Shahu Nagar,
Latur, Tq. & Dist-Latur,
- 3) Rahul s/o Babruwahan Mane,
Age-37 years, Occu:Service as
Shikshan Sevak, R/o-Shahu Nagar,
Latur, Tq. & Dist-Latur,
- 4) Kasar Imrankhan Mehebubkhan,
Age-28 years, Occu:Service as
Shikshan Sevak, R/o-Labour Colony,
Latur, Tq. & Dist-Latur.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The Deputy Director of Education,
Latur Division, Latur,

- 3) The Education Officer (Secondary),
Zilla Parishad, Latur,
- 4) Samta Shikshan Prasarak Mandal,
Latur, Tq. & Dist-Latur,
Shahu Nagar, Nanded Road, Latur,
Through its President/Secretary,
Tq. & Dist-Latur,
- 5) Milind Secondary and Higher
Secondary Vidyalaya, Labour Colony,
Latur, Tq. & Dist-Latur,
Shahu Nagar, Nanded Road,
Through its Head Master,
Tq. & Dist-Latur.

...RESPONDENTS

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Mr.V.S. Panpatte Advocate for Petitioners.
Mr.A.R. Kale, A.G.P. for Respondent
Nos. 1 to 3.
Mr.H.S. Bali Advocate for Respondent
Nos. 4 and 5.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 3RD DECEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: 18TH DECEMBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and

heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India, has been filed with following substantive prayers:

"B. By a writ of certiorari or any other appropriate writ or direction in the like nature, the decision/order dated 18.09.2017 (at Exh. "Q" colly.) passed by Respondent No.3 – Education Officer (Secondary) may please be quashed and set aside.

C. By a writ of mandamus or any other appropriate writ or direction in the like nature, the Respondent No.3 – Education Officer (Secondary) may please be directed to grant approvals to the appointments of the petitioner Nos. 1 to 4 as Shikshan Sevaks w.e.f. 17.11.2014 to 16.11.2017, 01.09.2016 to 31.08.2019 and 01.08.2017 to 31.07.2020 respectively and further Respondent No. may please be directed to grant permanent approval to the services of

the Petitioner No.1 w.e.f. 17.11.2017 onwards as Assistant Teacher and accordingly release salary of petitioners."

3. It is the case of the Petitioners that Respondent No.4 is running Respondent No.5 secondary school on aided basis. On account of retirement of senior teachers, four posts had fallen vacant on different dates i.e. two posts on 31st May, 2014, one post on 31st August, 2016 and one post on 31st July, 2017, and therefore Respondent Nos.4 and 5 by letters dated 18th October, 2014, 25th January, 2016 and 6th April, 2017, requested Respondent No.3 to grant permission for filling up the said vacant posts of Maths, Science, Marathi, and one post on D.Ed. Basis from S.C., O.B.C. and Open category, by issuing public advertisement. However, Respondent No.3 neither responded the said letters nor sent any surplus teachers. Respondent Nos.4 and 5 issued advertisements dated 2nd November, 2014, 7th

August, 2016 and 15th July, 2017 to fill up the said vacant posts from different categories only to clear the backlog of S.C. and O.B.C. category as per Government Resolution dated 21st August, 2013. In pursuance of the said advertisements, Petitioner Nos.1 and 3 are selected and appointed from S.C. category, Petitioner No.2 is selected and appointed from open category and Petitioner No.4 is appointed from O.B.C. category on 17th November, 2015, 1st September, 2016 and 1st August, 2017. Respondent No.5 forwarded proposal to Respondent No.3 for getting approval to the appointment of Petitioner. The proposal was forwarded on 6th September, 2016, for getting approval to the appointments of Petitioner Nos.2 and 3, and the proposal was forwarded on 7th August, 2017, for getting approval to the appointment of the Petitioner No.4. The said proposals were pending without decision for years together, and therefore as per the ratio laid down

in the case of Shailaja Ashokrao walse vs. State of Maharashtra and others¹ the approval to the appointment of Petitioners as Shikshan Sevak deemed to have been granted. Respondent No.3 Education Officer belatedly made a farce of deciding the said proposals, and without considering the fact that the Petitioners were appointed in pursuance of issuance of advertisement and after following due procedure as contemplated under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "M.E.P.S. Act), by orders dated 18th September, 2017, refused to grant approval to the appointment of the Petitioners. Hence this Petition is filed by the Petitioners.

4. Learned counsel appearing for the Petitioners submits that, staff sanction order

1 1999(1) Mh.L.J. 291

issued by Respondent No.3 reveals that there are seven sanctioned posts of teaching staff, and on the said sanctioned posts only seven employees are working, therefore, the appointments of the Petitioners are within sanctioned posts in the establishment of Respondent No.5 school. It is submitted that even the names of the Petitioners are also included in the seniority list prepared and maintained by Respondent No.5 school. Learned counsel submits that Education Officer, relying upon the Government Resolution dated 2nd May, 2012, refused to grant approval to the appointment of the Petitioners, on the ground that there was ban of recruitment of teachers in private aided schools till 100% absorption of surplus teachers is done. Learned counsel referred to the Government Resolutions dated 4th September, 2012 and 19th July, 2014, whereby sanction has been granted for filling in the vacant posts of assistant teachers for English, Mathematics and

Science subjects in Secondary and Higher Secondary Schools. It is submitted that Petitioner Nos.1 and 4 are also appointed to teach Science and Mathematics subjects and they belong to S.C. and O.B.C. category. Petitioner No.3 came to be appointed from S.C. category. Thus, it is submitted that the appointment of the Petitioner Nos.1, 3 and 4 are also within four corners of law. It is further submitted that though appointment of Petitioner No.2 is from open category, his appointment is for teaching Marathi subject. Learned counsel placed reliance upon the Judgment of the Division Bench (CORAM: SHANTANU S. KEMKAR AND PRAKASH D. NAIK, JJ.) of Bombay High Court at Principal Seat in Writ Petition No.10580 of 2015 and other connected matters (Sou. Revati Kusha Wagh and another vs. the State of Maharashtra and another), wherein it is held that, the ban imposed by the Government Resolution dated 2nd May, 2012 would not apply to the appointments

which were made from reserved category after following due procedure of law.

5. Learned counsel further submits that the Government has undertaken special drive to fill up the backlog of reserved posts and accordingly issued Government Resolution dated 21st August, 2013. Therefore, in accordance with the said directions, Respondent management appointed Petitioner Nos.1 and 3 from S.C. Category and Petitioner No.4 from O.B.C. category and as such appointment of the Petitioners is after following due procedure. Learned counsel therefore prayed that the Petition may be allowed.

6. On the other hand, learned A.G.P. appearing for the State, relying upon the reply filed on behalf of Respondent No.2, submits that the appointments of the Petitioners are not legal, proper and are against the provisions of M.E.P.S.

Act. It is submitted that the Respondent management has published the advertisement without following the procedure prescribed under M.E.P.S. Act, more particularly, Section 5 and Rule 9 of the Act and Rules. Respondent management has not confirmed whether there are surplus teachers available in the list of surplus teachers maintained in the office of Education Officer. Learned A.G.P. further submits that though Respondent management has sought permission to fill up the vacant posts of Assistant Teachers, but prior to seeking such permission, never requested to send available surplus teachers so as to accommodate them on vacant posts. It is submitted that, at the relevant time, 13 surplus teachers from O.B.C. category, 6 surplus teachers from S.C. Category and 108 surplus teachers from open category, were available to accommodate on vacant posts. It is submitted that considering the provisions of M.E.P.S. Act, and Rules, and

considering the Government Resolution, Respondent No.2 has rightly rejected the proposals submitted by Respondent management for granting approval to the services of the Petitioners. Learned A.G.P. therefore submitted that the Petition is liable to be rejected.

7. We have carefully considered the submissions of the learned counsel appearing for the Petitioners and learned A.G.P. appearing for the State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of Respondent State and its officials.

8. It appears that the proposals for grant of approval to the appointments of the Petitioners have been rejected, relying upon the Government Resolution dated 2nd May, 2012, as per which there

was ban on recruitment of teachers till 100% absorption of surplus teachers. In this respect, it would be useful to refer the observations in the case of Ashok s/o Nilkanth Dhale vs. State of Maharashtra and others², wherein in Para Nos.9 to 13, it is held that:

"9. We have given careful consideration to the submissions advanced by the learned Counsel appearing for the petitioner, learned AGP for respondent Nos. 1 and 2 State, the learned Counsel appearing for respondent No. 3 and the learned Counsel appearing for respondent Nos. 4 and 5. With their able assistance, perused the pleadings in the petition and annexures thereof. Clauses 1 and 2 of the Government Resolution dated 13-4-2011 issued by the General Administration Department, Government of Maharashtra, reads thus :

"1) गट – अ व गट – ब संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची विशेष मोहीम सुरु करण्यात यावी.

2) गट – क व गट – ड संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष

भरण्याची पदभरतीची प्रक्रिया सुरु करण्याकरिता वित्त विभागाच्या दिनांक २९-११-२०१० च्या शासन निर्णयाच्या आधीन राहून विशेष मोहीम करण्यात यावी."

Thereafter, by issuing another Government Resolution dated 21-8-2013, time to appoint the candidates from the reserved category, so as to fill in the backlog, has been extended till 31-3-2013.

10. In the present case, the petitioner is appointed as Teacher on 21-8-2013. There is no contest on the part of the respondents to the statement made in the petition that the petitioner belongs to NT-C category. Admittedly, the posts of Teachers are reserved for the said category.

11. In the impugned communication, the Education Officer placed reliance on the Government Resolution dated 2-5-2012 issued by the School Education Department, Government of Maharashtra. Prior to issuance of the said Government Resolution, the General Administration Department, Government of Maharashtra has issued Government Resolution on 13-4-2011 and as a special case, allowed the institutions to fill-up the posts reserved for the backward

category and therefore, the ban imposed by the Government Resolution dated 2-5-2012 would not apply to the present case since the petitioner's appointment was from the NT-C reserved category.

12. In that view of the matter, the impugned communication dated 22-2-2016 issued by respondent No. 3 – The Education Officer (Primary), Zilla Parishad, Latur is quashed and set aside. Respondent No. 3 is directed to consider the proposal for appointment of the petitioner as Teacher afresh without raising the same reasons which are mentioned in the impugned communication, as expeditiously as possible, however within a period of four weeks from today, and communicate the decision to respondent Nos. 4 and 5.

13. The Writ Petition stands allowed in the above terms. Rule is made absolute accordingly. No costs."

9. In the present case, the appointments of the Petitioner Nos.1 and 3 are on the posts reserved for S.C. Category, and Petitioner No.4 is

appointed on the post reserved for O.B.C. category.

10. The Division Bench of this Court at Principal Seat, Mumbai (CORAM: B.R. GAVAI AND RIYAZ I. CHAGLA, JJ.) in Writ Petition No.8587 of 2016 with connected Writ Petitions (Smt. Munoli Rajashri Karabasappa vs. State of Maharashtra Shikshan Prasarak Mandal Ghodnadi, Dist-Pune vs. State of Maharashtra and another) vide order dated 10th July, 2017, in Para-9 has held thus:

"9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents- Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-

(a) Where the recruitment process is already

commenced prior to GR dated 2nd May, 2012;

(b) where the appointments made for filling up vacancies in English, Mathematics and Science;

(c) where the recruitment is made to fulfill the backlog of reserve categories candidates."

11. As already observed, admittedly, appointments of the Petitioner Nos.1, 3 and 4 are on the posts reserved for S.C. and O.B.C. categories. Petitioner No.2 is appointed to teach Marathi subject. Further, the documents placed on record reveals that appointment of Petitioners is for filling up the vacancies to teach the special subjects such as English, Mathematics and Science. It appears that before passing impugned orders, Respondent No.3 - Education Officer, has not taken into consideration all these facts and rejected

the proposals forwarded seeking grant of approval to the appointments of the Petitioners. Thus, we are of the considered view that the impugned orders dated 18th September, 2017 passed by Respondent No.3, thereby rejecting to grant approval to the appointments of the Petitioners, deserve to be quashed and set aside.

12. For the reasons above stated, we pass following order:

O R D E R

I) Impugned orders dated 18th September, 2017 passed by Respondent No.3, thereby rejecting to grant approval to the appointments of the Petitioners, are quashed and set aside.

II) Respondent No.3 – Education Officer

is directed to examine individual cases of the Petitioners in the light of observations made herein above, and after verifying from the record that Petitioner No.1 and 3 are from S.C. Category, Petitioner No.2 is appointed to teach Marathi subject and Petitioner No.4 is from O.B.C. category, take necessary steps to grant approval to the appointments of the Petitioners as Shikshan Sevaks from their respective date of appointments, and pay salary and wages to them, to which they are entitled to.

IV) Rule is made absolute in above terms. Writ Petition stands disposed of, accordingly.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]