

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.837 OF 2018

1. Shubhangi D/o. Bhagwat Chate, .. **PETITIONERS**
Age-27 years, Occu-Service as
Shikshan Sevak,
R/o. Tambawa, Tq. Kej,
Dist. Beed
2. Ashwini D/o. Manik Kharbad,
Age-28 years, Occu-Service as
Shikshan Sevak,
R/o. Yusuf Wadegaon,
Tq. Kaij, Dist. Beed
3. Seema D/o. Rangrao Rudre,
Age-28 years, Occu-Service as
Shikshan Sevak,
R/o. At Aranwade Post: Choramba,
Tq. Dharur, Dist. Beed
4. Tejaswini D/o. Rajabhau Wagchoure,
Age-24 years, Occu-Service as
Shikshan Sevak,
R/o. Buddha Nagar, Ambajogai
Tq. Ambajogai, Dist. Beed

VERSUS

1. The State of Maharashtra ... **RESPONDENTS**
through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary)
Zilla Parishad, Beed

3. Yogeshwari Shikshan Sanstha,
Ambajogai, Tq. Ambajogai,
Dist. Beed, Through its Secretary
4. Shri Yogeshwari Nutan Vidyalaya,
Primary Section, Ambajogai,
Tq. Ambajogai, Dist. Beed
Through its Headmaster

Mr.V.s.Panpatte, Advocate for the petitioners

Mr.U.S.Mote, Advocate for respondent No.2

Mr.A.G.Deshmukh, Advocate h/f Mr.M.M.Patil (Beedkar),
Advocate for respondent Nos.3 and 4

Ms.Vaishaly S. Chaudhary, AGP for the respondent/State

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 06.04.2018

PRONOUNCED ON : 13.04.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this petition under Articles 14,16, and 226 of the Constitution Of India the petitioners have claimed following substantive reliefs :

B) By writ of certiorari or any other appropriate writ or directions in the like

nature, the order dated 03.01.2018 (Exhibit "M") issued by the Respondent No.2- Education Officer (Primary) may please be quashed and set aside.

C) By writ of mandamus or any other appropriate writ or directions in the like nature, the Respondent No.2 Education Officer (Primary) may please be directed to grant approval to the appointment of the petitioners as Shikshan Sevak from 12.08.2014 to 11.08.2017 and further the respondent No.2 may please be directed to grant permanent approval to the services of petitioners as Assistant Teacher in regular pay-scale from 12.08.2017 in Respondent No.4-School and accordingly release arrears of salary of the petitioners.

3. Facts giving rise to this petition are as under:-

A] According to the petitioners, respondent No.2 is the Education Officer (Primary) who is authority constituted under Statute for grant of approval. Respondent No.3 is the Educational Institution who runs respondent No.4 school on 100% grant-in-aid basis. There are 44 sanctioned posts for the academic year 2014-15 on the establishment of respondent No.4 school as per staffing pattern approved by respondent No.2.

B] Petitioner Nos. 1 to 4 are having HSC, D.Ed. Qualification. Petitioner Nos. 1 and 2 are from open

category. Petitioner No.3 is from S.T. category. Petitioner No.4 is from S.C. category.

C] Respondent No.3 Institution issued an Advertisement in daily Sakal dated 20.06.2014 for filling the vacant and sanctioned posts of Shikshan Sevak in respondent No.4 school as the post held by the petitioners had fallen vacant on account of retirement of earlier permanent Assistant Teachers of the said school i.e. Sow. V.G.Byas, Sow R.R. Dhaigude, Shri. S.N. Satpute and N.N.Barewad and on account of death of Rajabhau Manik Waghchoure on 24.10.2010. Prior to advertisement respondent No.4 by representations dated 23.10.2013, 28.11.2013, 01.03.2014, 21.03.2014, 22.05.2014 and 05.07.2014 had sought permission of respondent No.2 to fill up the above said posts and after waiting for considerable period as there was no response from respondent No.2, respondent Nos.3 and 4 had issued the advertisement.

D] According to the petitioners, in response to the above advertisement, petitioner Nos.1 to 3 applied for the post of Shikshan Sevak and petitioner No.4 applied for the post of Shikshan Sevak on compassionate ground as her father was permanent employee on the post of

Assistant Teacher. All the petitioners were interviewed on 03.08.2014 and Interview and Selection committee duly constituted by respondent Nos. 3 and 4 selected them for respective posts of Shikshan Sevak, they being meritorious than other candidates present for the interviews. Thereafter respondent No.4 by orders dated 12.08.2014 to 11.08.2017 appointed petitioner Nos. 1 to 3 and petitioner No.4 (on compassionate ground) to the respective posts of Shikshan Sevaks w.e.f. 12.08.2014 and 11.08.2017 and they joined on their respective posts of Shikshan Sevak on 12.08.2014. Since then they are in continuous service in respondent No.4 school.

E] Consequent upon the appointments of the petitioners, respondent No.4 submitted proposal dated 18.10.2014 and 30.10.2014 to respondent No.2 the Education Officer (Primary) for getting approvals to the appointments of the petitioners. However, respondent No.2 the Education Officer (Primary) neither decided the said proposal nor granted approvals or communicated anything to the school or the petitioners for about two years. Therefore, approvals to the appointments of the petitioners are deemed to have been granted as per the ratio laid by this Court in the case of Shaileja Walse Vs State of Maharashtra reported in 1999(1) Mh.L.J. 291.

F] Further it is the case of the petitioners that they have completed their three years probation period as Shikshan Sevak satisfactorily and thereafter respondent No.3 issued the appointment orders dated 12.08.2017 in favour of petitioners as Assistant Teachers in regular pay scales and thereafter proposal for grant of permanent approval has been submitted. Therefore, the petitioners are entitled for getting all the consequential benefits, as per the Government Resolution dated 14.10.2010. The proposal for grant of approval to the appointments was pending before respondent No.2 for two years. Therefore, they constrained to approach this Court by filing the writ petition No.9709/2016 for seeking directions to decide the said proposal for grant of approval. During the pendency of the said petition on 20.02.2017 respondent No.2 decided and rejected the proposal for grant of approval on availability of surplus teachers said order was assailed in writ petition No.9709/2016. The said writ petition was heard on 23.11.2017 and after hearing both the sides, the detailed observations were made in paragraph Nos. 6 and 7 and the order passed by respondent No.2 the Education Officer rejecting approval to the appointments of the petitioners has been set aside. This Court further directed respondent No.2

Education Officer to re-consider the proposal for grant of approval afresh on its own merits and that it shall not reject the said proposal on the ground that prior permission was not obtained or that there was ban on recruitment or that surplus candidates were available.

G] Further it is the case of the petitioners that thereafter detailed representation was submitted by respondent No.4 to respondent No.2 and submitted copy of judgment and order passed by this Court and request was made to grant approval to their appointments initially as Shikshan Sevak and thereafter as Assistant Teacher in regular pay scale. However, respondent No.2 the Education Officer again refused to accord approvals to the appointments of the petitioners on 03.01.2018 (Exh.M) on the ground of availability of the surplus teachers relying upon the government resolution dated 02.05.2012. The impugned order passed by the Education Officer is in breach of directives issued by this Court and findings recorded in paragraph Nos. 6 and 7 of order dated 23.11.2017 in earlier writ petition No.9709/2016. Therefore, impugned order dated 03.01.2018 passed by respondent No.2 the Education Officer refusing to grant approval to the appointments of the petitioners initially as Shikshan Sevak and thereafter as Assistant Teacher in

regular pay scale is unsustainable and liable to be quashed and set aside. Therefore, this petition.

4. Affidavit-in-reply is filed by Headmistress (respondent No.4) of the school she has reiterated almost all the contentions as are raised by the petitioners in their petition in respect of attempt made by respondent No.4 to seek prior permission to fill up the posts of Shikshan Sevak by making representations to respondent No.2 and issuing appointment orders to the petitioners as Shikshan Sevak after following selection process as contended by the petitioners. It is contended that appointment of petitioner No.4 cannot be termed as compassionate appointment and her appointment was made on the post reserved for S.C. category as she belongs to the S.C. category and found eligible and competent. It is contended that the impugned order deserves to be quashed as prayed by the petitioners.

5. Rest of the respondents have not filed reply.

6. Learned Advocate appearing for the petitioners submits that there is no dispute that petitioner Nos.1 and 2 are appointed from open category, petitioner No.3 is appointed from S.T. category and petitioner No.4 is appointed from S.C. category as Shikshan Sevak in

respondent No.4 school as posts were fallen vacant on account of retirement of earlier permanent Assistant Teachers stated earlier, after issuing advertisement in daily Sakal dated 20.06.2014. Consequent upon the appointments of the petitioners, respondent No.4 submitted proposal dated 08.10.2014 and 30.10.2014 to respondent No.2 the Education Officer (Primary) for getting approvals to the appointments of the petitioners, but nothing was communicated to the school or the petitioners for about two years. Therefore, approval to the appointments of the petitioners are deemed to have been granted as per ratio laid down by this Court in the case of Shailaja Walase (supra). Learned Advocate further submits that the petitioners have completed their three years probation period as Shikshan Sevak satisfactorily and thereafter respondent No.3 issued appointment orders dated 12.08.2017 in favour of petitioners as Assistant Teachers in regular pay scale and thereafter proposal for grant of permanent approval has been submitted. Therefore, the petitioners are entitled for getting all the consequential benefits as per Government Resolution dated 14.10.2010. The said proposal was pending for two years. Therefore, petitioners filed writ petition No.9709/2016 for seeking directions to decide the petitioners' proposal to grant approval. During pendency

of the said petition on 20.02.2017 respondent No.2 rejected the said proposal for grant of approval to the petitioners' appointment on availability of surplus teachers and other grounds. There is no dispute that the said writ petition No.9709/2016 was decided on 23.11.2017 by the Division Bench of this Court to which one of us (Justice S.M.Gavhane, J.) was member and after hearing both the sides, it was observed in para Nos.6 and 7 are as under:-

“6. Time and again it has been held that ban on recruitment as per Government Resolution dated 02.05.2012 does not apply to filling in posts from the reserved category candidates. Petitioner No.3 is appointed from Scheduled Tribes category and petitioner No.4 is appointed from Scheduled Castes category. Moreover, he is also appointed on compassionate ground on which ban of recruitment could not have been an Impediment. It would appear that posts were vacant because of retirement of Assistant Teachers. As such the Management on 23.01.2012 moved the authorities intimating authority of the vacancy available with the institution. The authority did not take any steps pursuant to the application and did not send any surplus candidate to institution for being absorbed in the said institution. It appears that four times reminders were issued by the institution to the Education Officer. But the Education Officer did not take any steps to send any surplus candidate to the respondent institution and eventually after eight months respondent institution issued advertisement dated 20.06.2014 and after following selection process, petitioners are appointed on 12.08.2014. We would have appreciated arguments of Mr. Suryawanshi, Learned Advocate that, had the Education Officer sent some surplus teachers to be absorbed in the respondent institution and the respondent institution would not have abided

by it. But is not the case. Respondent-institution time and again was giving applications to the Education Officer but the Education Officer turned blind eye to the said applications and after waiting for eight months advertised the said posts. Four posts were vacant without Assistant Teacher/Shikshan Sevaks. Students would be sufferers, if for long period teacher is not appointed. Surplus teachers were not directed to be absorbed by the respondent institution in the year 2012-13, 2013-14 and 2014-15. It was lethargy on the part of the authority. Considering the aforesaid conspectus of the matter, judgment referred by the respondents would be of no assistance.

7. Considering the above, the impugned order rejecting proposal seeking approval to the appointment of the petitioner is set aside. The Education Officer shall reconsider the proposal seeking approval to the appointments of the petitioners afresh on its own merits and it shall not reject the said proposal on the ground that prior permission was not obtained or that there was ban on recruitment or that surplus candidates were available. Said proposal be decided expeditiously, preferably within three months.”

7. It is not the case of the respondents that they have assailed the above said order. It is clear from the above referred observations in the paragraph Nos. 6 and 7 in the order dated 23.11.2017 in the writ petition No.9709/2016 that the present petitioners had filed the said writ petition initially to issue directions to the respondent authorities to decide proposal for approval of their appointments and when said proposal was rejected on 20.02.2017 by amending the said writ petition a prayer was made to set aside the order dated 20.02.2017. Accordingly said order dated 20.02.2017 impugned in the

said writ petition rejecting proposal seeking approval to the appointments of the petitioners was set aside and the Education Officer was directed to re-consider the proposal seeking approval to the appointments of the petitioners afresh on its own merits and it shall not reject the said proposal on the ground that prior permission was not obtained or that there was ban on recruitment or that surplus candidates were available and said proposal was ordered to be decided expeditiously, preferably within three months.

Learned Advocate for the petitioners further submits that after above order detailed representation with copy of order was made to the Education Officer, but still the Education Officer rejected proposal on similar ground by the impugned order dated 03.01.2018 which act of the Education Officer is contemptuous and action needs to be taken against Education Officer and impugned order is liable to be quashed and set aside.

8. It appears that despite specific directions as above by order dated 23.11.2017 in writ petition No.9709/2016 the present respondent No.2 the Education Officer by order dated 03.01.2018 impugned in the present petition rejected approval to the appointments of the

petitioners on the ground that the petitioners' appointment are after 02.05.2012 and hence no approval can be granted to their appointments as Shikshan Sevak until process of absorption of surplus teacher in the District is complete. Thus, it is clear that although the Education Officer was directed as per order dated 23.11.2017 in writ petition No.9709/2016 not to reject the proposal on the ground that surplus candidates were available still proposal is rejected by the impugned order. Similarly, petitioner No.3 is appointed from ST category and petitioner No.4 is appointed from SC category and therefore Government Resolution dated 02.05.2012 regarding ban on recruitment of fresh staff cannot be made applicable to the appointment of reserve category candidates. Moreover, it is pertinent to note that the petitioners were appointed after following selection process after issuing advertisement, after several representations by the institution seeking permission to fill up the posts, as the posts were vacant and no surplus teachers were directed to be absorbed by the institution by the Education Officer as observed in order dated 23.11.2017 in earlier writ petition.

9. For the above reasons, the impugned order dated 03.01.2018 (Exh.M) is set aside and respondent No.2 the

Education Officer (Primary) is directed to grant approval to the appointments of the petitioners as Shikshan Sevak and further to grant permanent approval to their services as Assistant Teacher in regular pay scale from 12.08.2017 as claimed.

10. Accordingly rule is made absolute in terms of prayer clauses (B) and (C). The Writ Petition stands disposed of. No costs.

11. The Registrar (Judicial) of this Bench is directed to register suo-motu contempt petition by name against respondent No.2 Education Officer (Primary), Zilla Parishad, Beed and place the same for appropriate orders/directions as *prima facie* there appears non compliance of directions contained in the order dated 23.11.2017 in Writ Petition No.9709/2016 (Shubhangi d/o. Bhagwat Chate and ors. Vs The State of Maharashtra & Ors)

[S.M.GAVHANE, J.]

[S.S. SHINDE, J.]