

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

WRIT PETITION NO. 3901 OF 2016

1. Vidyavardhini Shikshan Prasarak
Mandal, Govindpur, Tq. Kallam,
Dist. Osmanabad
Through its Secretary
2. Saraswati Vidyalaya,
Govindpur, Tq. Kallam,
Dist. Osmanabad
Through its Head Master
3. Anand Shivraj Gaikwad
Age : 36 years, Occ : Service,
R/o Bhat-Shirpura, Tq. Kallam,
Dist. Osmanabad.

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of School Education,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

.. RESPONDENTS

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Shri S.S. Jadhavar, Advocate for petitioners
Shri P.N. Kutti, A.G.P. for respondent/State.

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

Reserved on : 22.01.2018
Pronounced on : 08.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. This Petition is filed with the following prayers :-

"B) By issuing writ of certiorari or any other appropriate writ, order or direction, the order dated 31.01.2015 passed/issued by the respondent no.2 thereby refusing approval to the appointment of the petitioner no.3 on the post of Shikshan Sevak in petitioner no.2 school, may kindly be quashed and set aside;

C) By issuing writ of mandamus or any

other appropriate writ, order or direction, respondent no.2 may kindly be directed to accord / grant approval to the appointment of the petitioner no.3 on the post of Shikshan Sevak in petitioner no.2 school, in view of the proposal dated 30.12.2013 submitted by the petitioner no.2."

3. It is the case of the petitioners that, petitioner no.1 is the trust, registered under the provisions of the Maharashtra Public Trusts Act, 1950 and is a society registered under the provisions of Societies Registration Act, 1860, which runs petitioner no.2 school, which is a recognized school, receiving 100% grants from the State Government. Petitioner No.3 is a candidate, who has been appointed as a Shikshan Sevak in petitioner no.2 school, after following due process. It is the case of the petitioners

that, in the academic year 2009-2010, the post of Assistant Teacher fallen vacant, therefore, on 5th April, 2010, petitioner no.2 sought permission from the office of Respondent No.2 to fill up the said post by advertising the same, but Respondent No.2 had not paid any heed to the said application. It is the case of the petitioners that, in the academic year 2009-2010, in all 8 posts of Assistant Teachers were sanctioned, which was increased to 9 in the academic year 2010-2011. The staff approval was also granted by Respondent No.2 on 29th January, 2011, which also indicates that, there were 8 sanctioned posts of Assistant Teachers in the academic year 2009-2010 and 9 sanctioned posts of Assistant Teachers in the academic year 2010-2011.

4. It is the case of the petitioners that, since Respondent No.2 did not give any

reply to the request made by the petitioners, vide application dated 05.04.2010, petitioner nos.1 and 2 published advertisement in daily "Dharashiv Times" on 2nd June, 2010 for filling in the post of Shikshan Sevak. Thereafter, after following due process of law, petitioner no.3 came to be selected and issued with appointment order dated 14th June, 2010, thereby appointing him on the post of Shikshan Sevak for a period of 3 years. As per the appointment order, petitioner no.3 joined the services of petitioner no.2 – school and since then he is working in petitioner no.2 – school.

5. It is the case of the petitioners that, petitioner no.2 has submitted proposal dated 30th December, 2013 to the office of Respondent No.2, seeking approval to the appointment of petitioner no.3, but the said proposal was rejected by Respondent No.2 by

order dated 31.01.2015 on the grounds that, prior permission of office of respondent no.2 was not sought before filling in the said post.

6. Learned counsel appearing for the petitioners submits that, the appointment of petitioner no.3 is after following the due procedure as envisaged in Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Hereinafter referred to as "the M.E.P.S. Act") and Rules made thereunder. The Education Officer was communicated about the vacancy and thereafter the advertisement was issued, and pursuant to the advertisement, the petitioner no.3 has been appointed. It is submitted that, all the posts from the reserved category have been filled in and there is no backlog as such. The roster has been verified and it is wrongly stated that,

there is backlog of appointment of one candidate from S.T. Category. It is submitted that, the Management has filed undertaking that, if there is backlog, the petitioner – Management will first make the appointment of the candidate from S.T. Category and then only will proceed further to fill up the remaining vacancy. Therefore, learned counsel submits that, the Petition may be allowed.

7. Learned A.G.P. appearing for Respondent/State, relying upon the affidavit in reply of Respondent No.2, submits that petitioner no.1 is running petitioner no.2 school, which is receiving grant-in-aid. It is submitted that, as per the staffing pattern for the year 2010-2011, there are total 9 posts of teaching staff, which were sanctioned. Out of these 9 posts, two posts of Assistant Teachers are vacant. Out of these two vacant post, on one post,

petitioner no.3 is appointed as Shikshan Sevak. It is submitted that, while filling in the said post, petitioners have not obtained the prior permission of office of Respondent No.2 as required under Section 5 of the M.E.P.S. Act, and without permission, petitioner no.3 is appointed as Shikshan Sevak. It is further submitted that, while filling in the post of Assistant Teacher in private aided school, the roster point has to be verified from the B.C. Cell, but the petitioner society has verified the roster on 2nd November, 2012 i.e. after appointment of petitioner no.3. It is submitted that, as per Government Resolution dated 18th October, 1997 for the academic year 2010-2011 only 8 posts of Assistant Teachers are sanctioned. The Assistant Commissioner, B.C. Cell, Aurangabad had verified the roster of the petitioner society on 2nd November, 2012, in which it is found that, there is backlog of one S.T.

Category. It is submitted that, out of these two vacant posts, the petitioner society appointed one candidate from open category and one post reserved for S.T. Category, is not filled in by the petitioner society, meaning thereby there is backlog of one S.T. Post.

8. It is submitted that, the appointment of petitioner no.3 is dated 14th June, 2010 i.e. prior to verification of roster. The petitioner society has submitted the proposal for individual appointment after lapse of three years period.

9. The Management has filed an undertaking. In the said undertaking, it is stated that petitioner Nos.1 and 2 are ready to appoint the person from reserved category on next vacancy. It is also stated that, unless and until backlog of Scheduled Tribe

category is filled in/satisfied, no person other than Scheduled Tribe category would be appointed in petitioner no.2 School.

10. We have considered the submissions of learned counsel appearing for the petitioners and learned A.G.P. appearing for Respondent/State. We have carefully perused the pleading in the Petition, grounds taken therein, the reply filed by Respondent No.2 and the Undertaking filed by the Management.

11. We have carefully perused the documents placed on record. It appears that, before advertising the post on which the petitioner was appointed, the letter was written to the Education Officer by the Management informing the Education Officer about vacancy. (The copy of the said letter is at Exhibit "A"/Page 11 dated 5th April, 2010.) It further appears that, the

advertisement was issued on 2nd June, 2010 and pursuant to said advertisement, the petitioner has been appointed. The fact that, the petitioner has been appointed is not in dispute. The fact that the petitioner has rendered satisfactory services from the date of his appointment i.e. from 14th June, 2010, is also not in dispute. The Section 5 of the M.E.P.S. Act, reads thus :-

**5. Certain obligations of
Management of private schools.**

(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

[Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such

vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.]

(2) Every person appointed to fill a permanent vacancy [except [Assistant Teacher (Probationary)] shall be on probation for a period of two years. Subject to the provisions of sub sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed:

[Provided that, every person appointed as [Assistant Teacher (Probationary)] shall be on probation for a period of three years.]

[(2A) Subject to the provisions of sub-sections (3) and (4), [Assistant Teacher (Probationary)] shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.]

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice [or salary [or honorarium] of one month in lieu of notice].

(4) If the services of any probationer are terminated under

sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).]

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period

of appointment of such person.

12. Upon careful perusal of the documents placed on record, in the light of provisions of sub-section (1) of Section 5, it appears that, the mandate of said Section has been adhered to by the Management. By virtue of sub-section [2-A] of Section 5 of the M.E.P.S. Act, petitioner no.3 has acquired the status of permanency. The Management has given undertaking that, if there is backlog, the petitioner – Management will first make the appointment of the candidate from S.T. Category and then only will proceed further to fill up the remaining vacancy.

13. In that view of the matter, we quash and set aside the impugned order dated 31st January, 2015 passed by Respondent No.2 and direct the Education Officer to reconsider

the proposal of petitioner no.3 for approval, keeping in view the discussion made hereinabove and shall take decision afresh, as expeditiously as possible, and preferably within four weeks from today and communicate the said decision to the petitioners. While reconsidering the case of petitioner no.3 for approval, the Education Officer shall not reject the same on the grounds which are stated in the impugned order.

14. With the above observations, the Writ Petition stands disposed of. Rule made absolute in above terms.

[K.K. SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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