

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

WRIT PETITION NO.3945 OF 2017

Anilkumar s/o Nivruttirao Boiwar
Age 32 years, Occu. Service as
Shikshan Sevak, R/o Shekapur,
Tq. Kandhar, District Nanded

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
School Education Department,
Mantralaya, Mumbai - 32
2. The Education Officer (Secondary),
Zilla Parishad, Nanded.
3. Mahatma Phule Gramin
Shikshan Prasaram Mandal,
Shekapur, Tq. Kandhar
District Nanded,
through its Secretary
4. Mahatma Phule Vidyalaya,
Shekapur, Tq. Kandhar,
District Nanded,
through its Head Master

... RESPONDENTS

.....
Shri V.S. Panpatte, Advocate for petitioner
Shri S.S. Dande, A.G.P. for State
Shri I.D. Maniyar, Advocate for respondents No.3 and 4
.....

CORAM: PRASANNA B. VARALE AND
 MANISH PITALE, JJ.

DATED : 20th AUGUST, 2018.

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.):

1. Heard Mr. Panpatte, learned counsel for the petitioner, Mr. Dande, learned A.G.P. for respondents No.1 and 2 and Mr. Maniyar, learned counsel for respondents No.3 and 4.

2. Rule. Rule made returnable forthwith and heard finally by consent of parties.

3. By way of present petition, the petitioner prays for the following reliefs :

(B) By a writ of certiorari or any other appropriate writ or direction in the like nature, the order dated 1st March 2017 issued by the respondent No.2 Education Officer 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.2 Education Officer may please be directed to grant approval to the appointment of the petitioner as

Shikshan Sevak in the respondent No.4 School and release his salary.

4. Learned counsel Mr. Panpatte, by inviting our attention to the documents placed on record, submitted that, the respondents No.3 and 4 published an advertisement in local newspaper namely "Punya Nagari", copy of the advertisement is placed on record at Exhibit C. It is stated in the advertisement that the institute is in need of post of Shikshan Sevak, which is to be filled in immediately. The candidates possessing requisite qualifications were called upon to attend the walk-in interview scheduled on 29.6.2015 at 11.00 a.m. The perusal of the advertisement further shows that, the respondent No.4 institute submitted a proposal to the Department of Education for making candidate available and it is cautioned by way of note in the advertisement that if such candidate is made available, his claim will be considered on priority basis. The communication placed on record at Exhibit C to the Education Officer (Secondary) reveals that a senior teacher in the school stood retired on 30.4.2015. As the post of the teacher was falling vacant, the Principal requested the Education Officer to forward a candidate available who is surplus. Then it is stated in the communication that if no such candidate is made available, the institute would publish an advertisement and fill up the post as per the roster.

5. Our attention was also invited to the verification of record including the roster point availability. Page 28 (Exhibit F) refers to the verification and approval by the Assistant Commissioner. The perusal of the documents shows that, two posts of Assistant Teacher are available, each from the category of Scheduled Caste. Then, our attention is invited to the appointment letter issued to the petitioner, dated 30.6.2015. In view of the appointment letter, the petitioner immediately joined the services and his application to that effect is also placed on record at Exhibit E. Then there is also communication placed on record at Exhibit I, wherein it is informed to the Education Officer that, in spite of the earlier communication forwarded to the Education Officer, as there is no response, the institute was left with no choice but to publish an advertisement to avoid the academic loss of the students. It is also stated that, on 29.6.2015 the petitioner appeared before the Committee for interview and on the satisfaction of the Committee, the petitioner was appointed.

6. Mr. Panpatte, learned counsel further submitted that the petitioner has now completed three years successfully after his appointment as Shikshan Sevak. It is then submitted that, though the proposal for approval of the petitioner was submitted

to the Education Officer, neither the decision is taken on the proposal of approval nor the petitioner is granted any benefit. As no decision was taken, the institute approached this Court by filing Writ Petition No.1977/2016 seeking directions to the Education Officer to take decision on the proposal.

7. Learned Mr. Panpatte then invited our attention to the order passed by the Education Officer (Secondary) on 1.3.2017 and the same is impugned in the petition. Learned counsel Mr. Panpatte further submitted that, the rejection of the petitioner not only shows the mechanical approach of the authority but it also shows that the authority even failed to consider the latest judgments of this Court. Mr. Panpatte, then inviting our attention to various judgments, submitted that, more than two occasions, the principal seat decided the issue and further issued directions to the State authorities. Mr. Panpatte then submitted that, by way of judicial pronouncements, the issue involved in the petition is no more res-integra and the State authority, only by raising technical hurdle, are mechanically rejecting the proposal.

8. Learned A.G.P. Mr. Dande made an attempt to oppose the petition. Learned A.G.P. Mr. Dande, drawing a support from the order impugned in the petition, submitted that,

there are large many surplus teachers available and unless and until these teachers are accommodated, approval cannot be granted to the petitioner or other teachers similarly circumstanced with the petitioner. Mr. Dande also made an attempt to submit before us that there are certain orders passed by Nagpur Bench and in view of these orders, the authority is unable to grant approval in favour of the petitioner. Considering these rival submissions, and on going through the judgments of this Court more particularly the judgment in the bunch of petitions i.e. Writ Petition No.8587/2016 with other connected petitions, delivered at principal seat by the Division Bench (Coram : B.R. Gavai and Riyaz I. Chagla, JJ), re-iterating the view in other judgment in Writ Petition No.2024/2017 and then the judgment delivered by the Division Bench at principal seat on 9.3.2017 in bunch of petitions namely Writ Petition No.10580/2015 and other connected petitions, we are of the clear opinion that, the stand taken by the Government is clearly unsustainable. Mr. Panpatte was justified in submitting before us that the issue is no more res integra. There is also considerable merit in the submission of Mr. Panpatte that the very stand or objection which is raised before this Court is already considered by the Division Bench at principal seat. It will not be out of place to refer to the relevant observations of the Division Bench on the aspect of the objection raised by the State Government namely

availability of the surplus teachers. The Division Bench, dealing with this aspect, was pleased to observe as under :

"5. The Division Bench of this Court in the cases of **Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr.** (Writ Petition No.10580/2015 with 1145/2016, decided on 9th March 2017), has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfil the backlog of backward class candidates.

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of Government Resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already

commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfil the backlog of reserved category candidates.

8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by way of Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the state exchequer will be burdened."

9. It will be also useful to refer the further observations which are reflected in para 9. The Division Bench carved out three categories for issuing directions to consider the cases for grant of approval. These categories are clause (a), clause (b) and clause (c). It is not in dispute that, the case of petitioner

falls in two categories namely category (b) and category (c). Though it was submitted by learned A.G.P. that the proposal be remitted back to the Education Officer for a fresh decision, we are unable to accept even his submission for the reason that the Division Bench at principal seat, considering the very issue, in writ Petition No.2024/2017, directed the Education Officer to grant approval and then further directed that the arrears of salary be paid within a stipulated period from the date of the order. A similar view is adopted by the another Division Bench at principal seat and the petitions filed were allowed i.e. in Writ Petition No.10580/2015, the petitions were allowed in terms of prayer clause (B) whereas Writ Petition No.8973/2016 was allowed in terms of prayer clauses (B) and (C).

10. Prayer clause (b) of writ Petition No.10580/2015 reads thus :

(B) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 29.9.2015 issued by the respondent No.2 thereby refusing to grant approval to the appointment of the petitioner No.1 as Shikshan Sevak in the school by name Barrister Nath Pai Vidyalay at Kudal, Dist. Sindhudurg run by the petitioner No.2 Institution, and accordingly the

respondent No.2 may be directed to grant the approval to the said appointment with effect from 23.7.2015 and to release the grant-in-aid for payment of monthly honorarium to the petitioner No.1 together with arrears from the said date of appointment."

11. Prayer clauses (b) and (c) in writ Petition No.8973/2016 reads thus :

- (B) By a writ of Certiorari or any other appropriate writ or direction in the like nature, the order dated 18.2.2015 passed by the respondent No.2 Education Officer (at Exh. 'N') may please be quashed and set aside.
- (C) That, by a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent No.2 Education Officer, may please be directed to grant approval to the appointments of the petitioners as Shikshan Sevaks in the respondent No.4 School and release arrears of their salary.

12. Considering all these aspects, we see no reason to take a different view than the view already taken by the Division Bench at principal seat. Resultantly, we allow the petition in terms of prayer clauses (B) and (C). The arrears of salary be

paid as expeditiously as possible and not later than six months from the date of this order. The petition is accordingly disposed of. Rule is made absolute in above terms.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-