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

WRIT PETITION NO.3928 OF 2017

1. Sanskriti Samvardhan Mandal,
Sharada Nagar, Sagroli,
Tq. Biloli, Dist. Nanded,
Through its Secretary
 2. Shri Chhatrapati Shivaji Junior Basic School,
Sagroli, Tq. Biloli, Dist. Nanded,
Through its Head Master
 3. Virbhadrā s/o Parshuram Vishwabramha,
Age: 34 years, Occu: Service,
R/o : Sagroli, Tq. Biloli, Dist. Nanded
 4. Sham s/o Arjun Bhosale,
Age: 29 years, Occu: Service,
R/o : Sagroli, Tq. Biloli, Dist. Nanded
 5. Tarabai D/o Kisan Siddhapure,
Age: 28 years, Occu: Service,
R/o : Sagroli, Tq. Biloli, Dist. Nanded
- ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
 2. The Education Officer (Primary),
Zilla Parishad, Nanded
 3. The Superintendent,
Pay & Provident Fund Unit
(Primary), Zilla Parishad,
Nanded
 4. The Director of Education (Primary),
Maharashtra State,
Pune
- ..RESPONDENTS

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Mr V. S. Panpatte, Advocate for petitioners;
Mr S. M. Ganachari, A.G.P. for respondent No.1 & 4;
Mrs Y. M. Kshirsagar, Advocate for respondent No.2

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 22nd November, 2018

ORAL ORDER:

Heard Mr Panpatte, learned Counsel appearing on behalf of the petitioners, learned Asstt. Govt. Pleader appearing for respondent Nos.1 & 4 and Mrs Kshirsagar, learned Counsel appearing on behalf of respondent No.2.

2. Rule. Rule is made returnable forthwith. With consent of the respective parties, the petition is taken up for final hearing.

3. Petitioner No. 1 is the Education Society. Petitioner No.2 is the school, being run by petitioner No.1 at village Sagroli, Tq. Biloli, Dist. Nanded and petitioner Nos.3, 4 and 5 are the teacher appointed by petitioner No.1. The two fold prayers made by way of the present petition. The first prayer is in respect of grant of the additional teachers qua additional divisions as per the Government Resolution and the provisions of the Right of Children to Free & Compulsory Education Act, 2009. The second prayer is quashing and setting aside the rejection order passed by the Education Officer (Primary) on the proposal of petitioner Nos.3, 4 and 5, submitted to the respondent authority by petitioner Nos.1 and 2.

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4. We are considering the second prayer initially and will proceed to the first prayer subsequently. Insofar as the second prayer is concerned, Mr Panpatte, learned Counsel appearing on behalf of the petitioners invited our attention to certain documents placed on record. By inviting our attention to the approved staff sanction dated 26th March, 2014, Mr Panpatte submitted that the petitioner-institute was having backlog of posts of three teachers. The concerned authority, in verification dated 26th March, 2014 directed the petitioner-institute to fill up the posts on priority basis and more particularly the posts from the reserved category by giving preferences.

5. Our attention was invited to the letter/communication dated 1st June, 2012 to submit that though the petitioner No.2 requested the Education Officer (Primary), Zilla Parishad, Nanded to consider the application for grant of approval to issue advertisement so as to fill up the vacant posts, the Education Officer (Primary) refused to accept the application and as such, by the said communication dated 1st June, 2012, petitioner No.2 requested the Education Officer (Primary) to grant permission to issue advertisement before 8th June, 2012, otherwise the petitioner Nos.1 and 2 would proceed to take further steps. By inviting our attention to the copy of said letter, it is submitted before us that there is an endorsement on the said letter/communication of receiving the same.

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6. Mr Panpatte then invited our attention to the copy of the advertisements issued by petitioner Nos.1 and 2 calling upon the candidates. These advertisements are published on 3rd August, 2015. The copy of advertisements published by petitioner Nos.1 and 2 in daily newspapers are also placed on record. Mr Panpatte, learned Counsel then submitted that in response to these advertisements, petitioner Nos.3, 4 and 5 submitted their claim for appointment and they were appointed initially as 'Shikshan Sevak' for a period of three years. Our attention was also invited to the joining letters. Then Mr Panpatte submitted that the information of appointing these petitioners was also forwarded to the office of the Education Officer(Primary).

7. Then it was submitted by Mr Panpatte that by communication dated 1st July, 2016, the proposal was submitted to the office of the Education officer (Primary) for grant of approval and as no decision was taken on the proposal, the petitioners approached this Court for seeking directions. The fact of filing the petition was brought to the notice of the Education officer (Primary) and during the pendency of the petition, the Education Officer (Primary), by an order dated 18th September, 2018 rejected the proposal. Mr Panpatte, learned Counsel for the petitioners submitted that for rejection of the proposal, the Education Officer (Primary) relied on the Government Resolution dated 4th April, 2018. It was submitted by Mr Panpatte that the rejection order only refers to the Government Resolution but nowhere states

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grounds of rejection as to what breach of the Government Resolution dated 4th April, 2018 is committed by the petitioners so as to reject the proposal.

8. Mr Panpatte then submitted that the reason is assigned in the affidavit-in-reply filed on behalf of respondent Nos.2 & 3 and it is submitted before this Court that the petitioners failed to absorb surplus teachers in the year 2016 even though there was vacancy and as such, the proposal is rejected. Mr Panpatte then submitted that this ground is clearly unsustainable in view of the material placed on record by the petitioners. Mr Panpatte then submitted that as there was no response from the office of the Education officer, the petitioner Nos.1 and 2 issued the advertisement and by following due procedure, petitioner Nos.3, 4 and 5 were appointed. Before appointment of the petitioner Nos.3, 4 and 5, at no point of time the office of the Education Officer (Primary) informed the petitioner Nos.1 and 2 about the availability of surplus teachers nor provided names of such surplus teachers so as to absorb in the petitioner No.2 school. Mr Panpatte then by inviting our attention to the documents placed on record submitted that subsequently whenever the list of surplus teacher is provided to petitioner Nos.1 and 2, they immediately absorbed such surplus teachers as per the availability of vacancies in the school. Therefore, the Education officer (Primary) can not raise this ground to oppose the petitioners.

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9. Learned Asstt. Govt. Pleader and learned Counsel appearing on behalf of the Education officer (Primary) supports the rejection order. Mrs Kshirsagar, learned Counsel appearing on behalf of respondent No.2 reiterated the ground of rejection reflected in the affidavit-in-reply filed on 24th April, 2018 on behalf of respondent Nos.2 and 3. Along with this affidavit-in-reply, the communications are also placed on record. Interestingly, these communications referred to the correspondence subsequent to the appointment of the petitioner Nos.3, 4 and 5. No document is placed on record on behalf of respondent Nos.2 and 3 to show that there was any reply to the earlier correspondence made by petitioner Nos.1 and 2 to the office of the Education Officer (Primary) seeking permission to issue advertisements or any communication informing the petitioners that there is availability of excess teacher or surplus teachers. In view of these facts, learned Counsel Mr Panpatte is justified in submitting before this Court that the ground raised for opposing the petition and supporting the refusal order is only an afterthought ground.

10. We find considerable merit in the submission of Mr Panpatte for another reason also i.e. in the rejection order this very ground is not raised but only a vague reference is made to the Government Resolution and this Government Resolution is of the year 2018, whereas the exercise seeking permission, etc. was undertaken by the petitioners much prior i.e. in the year 2015. Mr Panpatte is also justified in submitting before us that whenever

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the list of surplus teachers is provided to petitioner Nos.1 and 2, the petitioner Nos.1 and 2 absorbed these teachers and as while appointing petitioner Nos.3, 4 and 5, no list of surplus teachers was provided to petitioner Nos.1 and 2. As such, no fault can be find with petitioner Nos.1 and 2 for not absorbing the surplus teachers.

11. Mr Panpatte also submitted that as the petitioner No.3 and 4 were from reserved category, the case of these petitioners, who are squarely covered by the judgment and order passed by the Division Bench at Principal Seat in Writ Petition No.10580 of 2015 and other writ petitions No.2024 of 2017 and 3945 of 2017.

12. Considering the above referred facts, we are of the opinion that learned Counsel for the petitioner made out a case for second prayer, namely, quashing and setting aside the rejection order dated 18th September, 2018. Resultantly the prayers (E-2) and (E-3) are allowed.

13. Now so far as first prayer, namely, grant of additional staff is concerned, Mr Panpatte invited our attention to the Government Resolution dated 28th August, 2015 placed on record at Exh.'O'. It was the submission of Mr Panpatte that this Resolution is issued on the backdrop of the provisions of Right of Children to Free & Compulsory Education Act, 2009. Our attention was invited to the clause 2.1 and 2.2 to submit that the

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petitioner Nos.1 and 2 are running a school providing education for the students in standard 1st to 7th. Mr Panpatte, on the backdrop of this provision also placed on record a tabular chart. The said chart is taken on record and marked 'X' for identification. On relying upon this tabular chart, Mr Panpatte submitted that from year 2012-13 till year 2017-18, there is sufficient strength of students for classes 1st to 5th and classes 6th to 7th, so as to have additional teachers in view of clauses 2.1 and 2.2.2 of clause 2.2 of Government Resolution dated 28th August, 2015. Mr Panpatte submitted that for each year, the petitioner No.1 Institute though can rightfully claim the additional teachers every year, there was short fall of the teachers and the petitioners time and again submitted representations and proposals to the authority for grant of the additional teachers and no decision is taken by the authority.

14. It is also submitted by Mr Panpatte learned Counsel for the petitioners that the Education Officer is the only competent authority to take decision on the proposal of the additional teachers as per the strength of the students.

15. Mrs Kshirsagar, learned Counsel appearing on behalf of respondent No.2 Education Officer submitted that from year 2014, a new procedure is introduced and i.e. the petitioners seeking such staff sanction is require to put the proposal through a system, namely, Network Interface Card (NIC).

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She then submitted before us that initially the proposal was submitted by the petitioners adopting off-line process and in view of the Government Resolution dated 28th August, 2015, the proposal of the petitioner Institute is forwarded to the State Government for approval and the same is now pending decision of the State Government. She then submitted that grant of the additional teachers or additional divisions is a matter of policy decision and as such, the proposal is referred to the State Government for decision. She placed on record a copy of communication dated 21st September, 2018 which is taken on record and marked as 'X-1' for identification.

16. Considering the aforesaid rival submissions on the backdrop of the Government Resolution dated 28th August, 2015 and the Right of Children for free and Compulsory Education, 2009 Act, we are of the opinion that though the petitioners were justified in submitting before us that the petitioner Institute in view of the availability of strength of students is entitled for the additional number of teachers, we are unable to accept submission of Mr Panpatte that the Education Officer (Primary) is the authority for grant of approval for the additional teachers or additional divisions. It will not be out of place to refer to certain statement in Government Resolution dated 28th August, 2015. The object referred to in the opening part of said Government Resolution clearly shows that the issues, namely grant of divisions in primary section and higher primary sections falls for consideration before the State Government and the State

Government enjoys the powers to take decision on these issues. This fact is reiterated in the paragraph earlier to the Government decision. The Government Resolution also refers to the certain conditions which are to be considered while granting permission for the additional divisions or the additional teachers qua the strength of students.

17. Considering these aspects and considering an admitted fact that the Education Officer (Primary), Zilla Parishad forwarded the proposal with his opinion to the State Government, namely to the authority of the State Government, namely, the Director of Education (Primary), Maharashtra State, Pune by communication dated 25th September, 2018, we are of the opinion that the only course open now is to issue directions to the Director of Education to take decision on the proposal dated 21st September, 2018 expeditiously. Resultantly, we pass following order:

By way of directions, the Director of Education (Primary), State of Maharashtra, Pune is directed to decide the proposal received by him forwarded through the Education Officer (Primary), Zilla Parishad, Nanded on 21st September, 2018, as expeditiously as possible and not later than ten weeks from the date of the order of this Court. Needless to state that the Director of Education to decide the proposal on its merit as well as on the backdrop of the Government Resolution dated 28th August, 2015 and Right of Children to Free & Compulsory Education Act, 2009.

The writ petition is accordingly disposed of. Rule is made absolute.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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