

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

WRIT PETITION NO. 5223 OF 2018

Sunil s/o. Rajendra Fawade,
Age 30 Yrs. Occu: Assistant Teacher
In Sanskar Wardhini High School,
Shirol [W], Tq. Nilanga,
Dist. Latur.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai 400 032.
2. The Education Officer [Secondary],
Zilla Parishad, Latur,
Tq. And Dist. Latur.
3. Saint Kabir Bahuudesiya Shiksan
Prasarak Mandal, Shirol [W],
Tq. Nilanga, Dist. Latur,
Through its Secretary
4. The Head Master,
Sanskar Wardhini High School,
Shirol [W], Tq. Nilanga,
Dist. Latur.

.. RESPONDENTS

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Mr.S.R.Kolhare & P.S.Kochar, Advocate for the
petitioner
Mr.P.S.Patil, Addl.G.P. for respondent nos.1
and 2.
Mr.B.V.thombre, Advocate for respondent nos.3 and
4.

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

**Reserved on : 26.11.2018
Pronounced on: 17.12.2018**

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

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition takes exception to the order dated 19th March, 2018, passed by respondent no.2 i.e. Education Officer [Secondary], Zilla Parishad, Latur, thereby refusing approval to the appointment of the petitioner as a Shikshan Sevak / Assistant Teacher, with effect from 12th August, 2013.

3] It is the case of the petitioner that, he is appointed on the post of Assistant Teacher / Shikshan Sevak. The petitioner was duly selected to the post of Shikshan Sevak by following due

procedure as prescribed in Section 5 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 [for short 'Act of 1977'] and Rule 9 of the Maharashtra Employees of Private Schools [Conditions of Service] Rules, 1981 [for short 'Rules of 1981']. The post on which the petitioner is appointed, is clear and permanent post. The post of Shikshan Sevak to teach the Mathematics subject was advertised from Open category. It is the case of the petitioner that, since the Mathematics subject is considered as special subject, there is no ban for recruitment of the Shikshan Sevak and Government Resolution dated 2nd May, 2012, issued by School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai, cannot be considered bar for appointment of the Shikshan Sevak / Assistant Teacher to teach Mathematics subject. It is further the case of the petitioner that, the proposal dated 26th February, 2014, for the approval to the appointment of the

petitioner as Shikshan Sevak has not been considered and turned down by respondent no.2, relying upon the aforesaid Government Resolution dated 2nd May, 2012.

4] Learned counsel appearing for the petitioner submits that, there is no ban for recruitment of Shikshan Sevak for teaching the subject of Mathematics and to that effect the School Education and Sports Department, Government of Maharashtra, has issued a Government Resolution on 20th June, 2014. It is submitted that, the another ground of accommodating the surplus teacher cannot be made applicable in respect of the respondent - Educational Institution wherein the petitioner is serving, since respondent no.2 has not communicated the names of the surplus teacher / teachers to respondent nos.3 and 4 so as to accommodate them in respondent no.4 school. It is further submitted that, the Government Resolution dated 13th March, 2018, issued by the

School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai, in which the provision is made for exemption. Therefore, learned counsel appearing for the petitioner submits that, the Petition may be allowed.

5] Though the respondents are served, no reply is filed, and as a result the pleadings in the Petition and grounds taken therein remained uncontroverted on behalf of the respondents. However, learned Additional Government Pleader appearing for respondent nos.1 and 2, relying upon the reasons assigned in the impugned order, submits that, the Petition may be rejected.

6] We have given careful consideration to the rival submissions of the parties. With the able assistance of the learned counsel appearing for the respective parties, we have carefully perused the pleadings and grounds taken in the Petition, annexures thereto and also the Judgment and order passed by the Division Bench [Coram :

B.R.Gavai & Riyaz I. Chagla, JJ.] in Writ Petition No.8587 of 2016 [Smt.Munoli Rajashri Karabasappa Vs. State of Maharashtra & others], with connected Writ Petitions on 10th July, 2017, and we are of the opinion that, the Petition deserves consideration. The similar issue/controversy arose for consideration before the aforesaid Division Bench in Writ Petition No.8587 of 2016 with connected Writ Petitions. Para 4 to 8 of the said Writ Petition, held thus:

4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects English, Maths and Science are concerned.

*5. The Division Bench of this Court in the cases of **Sou. Revati Kusha***

Wagh & Anr. Vs. The State of Maharashtra & Anr.¹ 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

1 WP No.10580 of 2015 with 1145 of 2016 decided on 9th March 2017

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 which 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.

7] In the facts of the present case also, though 100% ban is imposed by the State Government on recruitment of Assistant Teacher, however, by subsequent Government Resolution dated 4th September, 2013, the said ban has been relaxed in so far as English, Mathematics and Science subjects are concerned. Admittedly, the petitioner is appointed as Shikshan Sevak to teach the Mathematics subject. Therefore, for the same reasons, which are assigned while deciding the aforesaid Writ Petition i.e. Writ Petition No.8587/2016, the impugned order deserves to be

quashed and set aside, and accordingly, the same is quashed and set aside. The Education Officer is directed to grant approval to the services of the petitioner subject to completion of procedural formalities.

8] Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]

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