

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5771 OF 2017

Rahul Madhavrao Kiwande .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

WITH

WRIT PETITION NO. 5798 OF 2017

Ganesh Baliram Kamble .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Ajinkya Reddy, Advocate for the Petitioners.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 2.

Shri N. V. Telgaonkar, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 18th June, 2018

PER COURT :

1. Mr. Reddy, learned counsel for the petitioners states that the petitioners in both these writ petitions belong to S.C. category and they are appointed to fill in the backlog of SC category candidates. The learned counsel submits that in

addition thereto the petitioner in Writ Petition No. 5771 of 2017 is appointed to teach Maths subject and the petitioner in Writ Petition No. 5798 of 2017 is appointed to teach English subject. The learned counsel submits that the Government Resolution dated 2nd May, 2012 imposing ban on recruitment does not apply to the appointments to fill in the backlog of reserved category candidates and so also the candidates appointed to teach English, Maths and Science subject. The petitioners are covered therein. The learned counsel relies on the Judgment of the Division Bench of this court at its Principal Seat at Bombay in Writ Petition No. 8587 of 2016 with connected writ petitions decided under order dated 10th July, 2017.

2. Mr. Karlekar, learned Assistant Government Pleader submits that the Education Officer upon considering that the appointment of the petitioners are after the Government Resolution dated 2nd May, 2012, has rejected the proposals seeking approval.

3. We have considered the submissions.

4. The Division Bench of this court at its Principal Seat at Bombay in Writ Petition No. 8587 of 2016 with connected writ petitions under order dated 10th July, 2017, has observed as under-

“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 of 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. has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfill 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 fulfill 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 whose inaction the State exchequer will be burdened.*

9. *In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents – Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-*

- (a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;*
- (b) where the appointments made for filling up vacancies in English, Mathematics and Science;*
- (c) where the recruitment is made to fulfill the backlog of reserve categories candidates;”*

5. The petitioners herein are appointed to fill in the backlog of reserved category candidates, so also, have been appointed to teach Maths and English subject. The matter of the petitioners is covered under the aforesaid Judgment.

6. In the light of above, the impugned orders are quashed and set aside. The Education Officer shall decide the proposals seeking approval to the appointment of the petitioners afresh. The Education Officer shall consider the procedure being followed, the qualification of the petitioners, the roster and all such aspects of the matter while deciding the proposals afresh. However shall not reject it on the ground on which the impugned orders are passed. The proposals shall be decided expeditiously and preferably within six (6) months.

7. Writ Petitions accordingly stand disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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