

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

WRIT PETITION NO. 5975 OF 2017

Nitin Bhatusingh Thakur,
Age 28 Years, Occu. Service,
R/o. Lamkani, Taluka and
District Dhule

...Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
2. The Education Officer [Secondary],
Zilla Parishad, Dhule,
Taluka and District Dhule.
3. The Lamkani Education Society,
Lamkani, Taluka and District Dhule
Through its Secretary
4. The Head Master,
English School, Lamkani,
Taluka and District Dhule

.....Respondents

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Mr. A.S. Sawant, Advocate for Petitioner
Mrs. A.V. Gondhalekar, AGP for Respondent Nos. 1 and 2
Mr. A.S. Sawale, Advocate h/f Mr. G.D. Jain, Advocate for
Respondent Nos. 3 and 4

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

DATE: 25th SEPTEMBER, 2018

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

1. Heard Mr. Sawant, the learned Counsel appearing for the Petitioner.

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

3. The petitioner is before this Court challenging the order dated 21.01.2017 passed by the Education Officer (Secondary), Zilla Parishad, Dhule, whereby the proposal for approving the appointment of the petitioner was rejected. The learned Counsel Mr. Sawant vehemently submitted that though in the rejection order, there are as many as 11 grounds are raised, none of the ground is sustainable for rejection of the proposal. The learned Counsel Mr. Sawant submitted that the very first ground referred to in the order is of non-compliance of the formalities, such as, seeking permission from the department of publishing an advertisement, and it is stated in ground No.1 that, no such advertisement was published. The learned Counsel by inviting our attention to the copy of the advertisement published in newspaper Saptahik 'Vishal Khandesh' on 4th of June, 2014, submitted that the Management-Institute published the advertisement, making it very clear in the advertisement that the Management-Institute is in need of 3 Shikshan Sevak and

one Peon. The perusal of the copy of advertisement placed on record at Exhibit 'B' clearly shows that the advertisement states that the Management-Institute is desirous to fill-up the posts from the reserved category candidates. It is stated that as there is a backlog, the Management-Institute is interested to filling these posts and priority would be given to the posts vacant in the Scheduled Tribes category. The learned Counsel Mr. Sawant submitted that the petitioner was having the requisite qualification such as a degree at his credit namely, B.Sc. from North Maharashtra University, Jalgaon. The learned Counsel Mr. Sawant also invited our attention to the roster point availability approved by the Assistant Commissioner. The document is placed on record at Exhibit - 'F', which states that with the Institute, there are as many as 6 posts vacancy is available. This is a backlog of one post available to the candidate belonging to Scheduled Caste, 4 posts for the Scheduled Tribes category and one post for the Special Reservation. The learned Counsel Mr. Sawant submitted that in view of this document which was annexed to the proposal submitted by the Institute, the grounds No. 1, 2 and 3 raised in the rejection order are clear and unsustainable. Mr. Sawant then submitted that even the ground raised in the order that in spite of availability of the surplus teachers, the Institute failed to absorb these surplus teachers

and appointed the petitioner. Mr. Sawant then invited our attention to the document placed on record at Exhibit - 'H'. This is an information sought by the petitioner under the Right to the Information Act. The chart clearly shows that though there are 2 teachers surplus available with the Management namely, Mr. Patil Ravindra Nimba and Mr. Desale Kamlesh Nathu. These two persons are from Other Backward Classes category and are competent to teach the language subjects namely, Marathi and Hindi. Mr. Sawant was justified in submitting that, if there was a requirement of a teacher teaching science students, the insistence of the Education Officer (Secondary) of absorbing these two persons to teach science subjects when these two persons are competent to teach language subjects, is also clearly unacceptable. The learned Counsel then submitted that all the other grounds in the rejection order are raised mechanically and without considering the latest decisions of this Court either at Principal Seat or at the Benches. Mr. Sawant, placed heavy reliance on the Judgment and order of the Division Bench dated 10th July, 2017 in a Writ Petition No. 8587 of 2016 and the bunch of Petitions.

4. The learned Counsel appearing for the Management-Institute is not disputing the factual aspects referred to by learned Counsel Mr. Sawant for the petitioner. The learned

Counsel for the Management-Institute placed on record a copy of communication dated 05.03.2014 addressed to the Education Officer (Secondary), Zilla Parishad, Dhule, and it clearly states that the Management-Institute requested the Education Officer (Secondary) to permit the Management to issue an advertisement so as to fill-up the posts for science subject of a suitable candidate from Scheduled Tribes category.

5. The learned Assistant Government Pleader opposes the Petition on the ground that the Management has not followed the procedure namely, seeking permission from the Education Officer (Secondary) to advertise the post and secondly, that as per the requirement of the Rules, the advertisement ought to have been published in a daily newspaper and not in a weekly newspaper. Now, insofar as the first ground of opposition of the learned Assistant Government Pleader is concerned, the petitioner has placed on record sufficient material to show that an advertisement was published in weekly newspaper dated 04.06.2014 and the learned Counsel for the Management-Institute also placed on record a communication forwarded to the Education Officer (Secondary) dated 05.03.2014, wherein the permission from the Education Officer (Secondary) was sought for. If the Education Officer (Secondary) had a reservation of nature of the newspaper, at that point of time, i.e. when the

proposal was received by the Education Officer (Secondary) on 05.03.2014, the Education Officer (Secondary) ought to have verified the factual aspects. Secondly, this reason is not assigned in the rejection order. A reason which is not reflected in the rejection order and an attempt to be supplemented with the help of an affidavit, cannot be considered by this Court in view of the judicial pronouncement of the Hon'ble Apex Court as well as of this Court. The learned Counsel Mr. Sawant was also justified in submitting that the issue was before the Division Bench and in the identical circumstances, the Division Bench allowed the following Writ Petitions.

- (i) Writ Petition No. 2024/2017 - (Shirur Shikshan Prasarak Mandal, Ghodnadi, Dist. Pune Vs. State of Maharashtra and Anr.) and;
- (ii) Writ Petition No.8587/2016 with other connected Petitions - (Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra and Ors. etc.)

6. In view of all the above referred facts, we are of the clear opinion that the rejection order impugned in the present petition, is clearly unsustainable. The Writ Petition thus, deserves to be allowed and the Writ Petition is allowed in terms of prayer clauses (A) and (B).

7. The Rule is made absolute in above terms and the Writ Petition is accordingly disposed of.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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