

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

WRIT PETITION NO. 8207 OF 2012

JAYSHRI ASHOK MATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO. 8485 OF 2012

ROHINI NAMDEO MATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO. 8486 OF 2012

THAKARAM BHAUSAHEB KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners: Mr. A.M. Gaikwad
AGP for Respondent/State: Mr. S.M. Ganachari
Advocate for Respondent No.5 : Mr. D.R. Markad

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CORAM : S.S. SHINDE & S.M. GAVHANE, JJ.
Dated: April 05, 2018

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PER COURT :-

At the outset, learned counsel appearing for the petitioners seeks leave to delete the name of Respondent No.6 from the array of the Respondents in Writ Petition Nos.8485/2012 and 8486/2012. Leave granted to delete the name of respondent No.6 from the array of the respondents at the risk of the petitioners. Amendment to be carried out

forthwith.

2. Heard learned counsel appearing for the petitioners and learned A.G.P. appearing for the State and its officials. Though learned counsel appearing for Respondent No.5 is present, he submits that, he has no further instructions to put-forth the contentions on behalf of Respondent No.5.

3. In all these three Petitions, the petitioners have challenged/have taken exception to the order passed by the Education Officer (Secondary), Zilla Parishad, Ahmednagar on 19th November, 2011 (Exhibit "H" to the Petitions), by which the proposals of the petitioners for approval of their services as assistant teachers, have been turned down/rejected on the ground that, the Respondent – Management has not appointed one candidate from S.C. category and one candidate from S.T. category, and therefore, in view of the said backlog, no approval can be granted to the appointment/services of the petitioners as Assistant Teachers.

4. Learned counsel appearing for the petitioners submits that, the petitioners

have been appointed in the year 2003 and have rendered continuous service, and thereby on completion of two years period, they have acquired the status of permanent employees in view of the provisions of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (Hereinafter referred to as "the M.E.P.S. Act"). He invites our attention to the letter written by the Deputy Director of Education, Pune Region, Pune to the Education Officer (Secondary), Zilla Parishad, Ahmednagar, thereby instructing the Education Officer to grant approval to the services of the petitioners by obtaining an undertaking from the Respondent - Management that, the Management will appoint one candidate from S.C. category and one candidate from S.T. category on the post of Assistant Teacher and will complete the backlog. It is his submission that, inspite of such instructions issued by the Deputy Director of Education to the Education Officer (Secondary), the Education Officer (Secondary) has not paid any heed to such instructions. Therefore, learned counsel appearing for the petitioners submits that, the Petitions deserve to be allowed.

5. On the other hand, learned A.G.P. appearing for the Respondent/State invites our attention to the averments in the affidavit in reply filed by the Education Officer, and submits that since the Management did not appoint one candidate from S.C. category and one candidate from S.T. category on the post of Assistant Teacher, the approval to the appointment/services of the petitioners has rightly been rejected.

6. We have considered the submissions of learned counsel appearing for the petitioners and learned A.G.P. appearing for the Respondent/State and the Education Officer. We have carefully perused the contents of the impugned orders. As it is stated in the affidavit in reply filed by the Education Officer that, there exists backlog of appointment of one teacher from the S.C. and S.T. category, however, the Education Officer has not taken into consideration the fact that, the petitioners have been appointed in the year 2003 and rendered services continuously to the satisfaction of the Management and there is no contra material brought on record by the Respondents

that, the petitioners have not rendered the continuous and satisfactory services. In view of the mandate of Section 5(2) of the M.E.P.S. Act, the petitioners have acquired status of permanency, since they have rendered more than two years services satisfactorily. Therefore, in view of the aforesaid deeming provisions, the petitioners have acquired the status of permanent employees. The Section 5 of the M.E.P.S. Act, reads thus :-

"5. Certain obligations of Management of private schools.

(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

[Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater

Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.]

(2) Every person appointed to fill a permanent vacancy [except [Assistant Teacher (Probationary)] shall be on probation for a period of two years. Subject to the provisions of sub sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed:

[Provided that, every person appointed as [Assistant Teacher

(Probationary)] shall be on probation for a period of three years.]

[(2A) Subject to the provisions of sub-sections (3) and (4), [Assistant Teacher (Probationary)] shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.]

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice [or salary [or honorarium] of one month in lieu of notice].

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in

the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).]

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

7. The Full Bench of the Bombay High Court in the case of **Ram Avadh Mahel Pal V/s**

Shivdutta Educational Trust and ors.¹ has held that, every candidate appointed as Shikshan Sevak shall on completion of the probation period of three years be deemed to have been appointed and confirmed as a teacher. The Division Bench of Bombay High Court in the case of **Lalitha Thutpi V/s C.B. Karkhanis, Presiding officer, School Tribunal Bombay and others**², in the facts of that case took a view that, if the qualifications are possessed by the candidates and two years probation period is completed, in that case, such appointment deserves to be protected, by directing the Respondent – Management to carry forward the post for the reserved category.

8. Keeping in view the ratios laid down in the above-stated two judgments and in view of the provisions of Section 5(2) of the M.E.P.S. Act, we are of the opinion that, the Education Officer is not right in rejecting the proposal seeking approval to the appointment/services of the petitioners as Assistant Teachers. In that view of the matter, the impugned orders are quashed and set aside. We direct Respondent No.5 –

1 2007(6) Mh.L.J. 659

2 1998(1) Mah. L.R. 235

Education Officer to reconsider the issue of approval to the appointment/services of the petitioners, keeping in view the letter written by the Deputy Director of Education, Pune Region, Pune (Exhibit I to the Petitions) dated 13th January, 2012 and take appropriate decision, as expeditiously as possible, and preferably within six weeks from today. Needless to mention that, while taking such decision, the Education Officer shall not assign the reasons, which are already assigned in the impugned letters/orders dated 19th November, 2011. We make it clear that, if the Education Officer needs any further record or assistance, he can issue directions to Respondent No.5 to make available necessary record for perusal and necessary reference.

9. With the above observations, the Writ Petitions stand disposed of.

10. Parties shall act upon authenticated copy of this order.

(S.M. GAVHANE, J.)

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(S.S. SHINDE, J.)