

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4951 OF 2013

Kankuri Gramin Vikas Kendra, **PETITIONER**
Kankuri, Taluka Rahata, District
Ahmednagar, Through its Secretary
Laxman Maruti Dange, Aged 60
Years, Occupation Agriculture,
Resident of Kankuri, Taluka
Rahata, District Ahmednagar

V E R S U S

- 1 The State of Maharashtra, Through **RESPONDENTS**
its Department of Secondary
Education, Mantralaya, Mumbai
- 2 Education Officer [Secondary],
Zilla Parishad, Ahmednagar
- 3 Dilip Maruti Murde, Aged 47
Years, Occupation Service,
Resident of, C/o. New English
School, Kankuri, Taluka Rahata,
Districted Ahmednagar

4 Pratiksha Nivrutti Kale, Aged 27
Years, Occupation Service,
Resident of Kankuri, Taluka
Rahata, District Ahmednagar

Mr. Santosh S. Jadhavar, Advocate for the Petitioner
Mr. Y.G. Gujrathi, A.G.P. for the Respondents/State
Mr. Amol G. Gandhi, Advocate for Respondent No.3
Mr. P.G. Tambde, Advocate for Respondent No.4

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**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATE : 21st MARCH, 2018

ORAL JUDGMENT : [PER : T.V. NALAWADE, J.]

The petition is filed under Article 226 of the Constitution of India for quashing and setting aside the order dated 6th April, 2013, passed by respondent No.2-Education Officer [Secondary], by which the Education Officer has directed the petitioner to give appointment to respondent No.3 in B.Ed. pay scale.

2. Both the sides are heard.

3. The submissions made and record show that respondent No.3-Dilip was appointed as untrained teacher in the year 1991 in the School for standard 5th to standard 10th. Though he completed B.Ed. in the year 1994, he was given D.Ed. pay-scale as such post was available. In the year 1997, one post of B.Ed. scale became available, but on that occasion, as one Ramesh Dharam was senior to him, the said post went to Ramesh Dharam. There was some dispute, but, ultimately, respondent No.3-Dilip conceded that Ramesh was senior than him in service and he was entitled to get that post.

4. In the year 2004, one more Post of trained graduate teacher became available. This post was advertised by the petitioner and appointment was given to respondent No.4-Pratiksha Kale. She is B.P.Ed. and not B.Ed. She is daughter-in-law of Secretary of the petitioner-Management, who was Head Master of the School. As the appointment was not given in B.Ed. scale to respondent No.3, he took the matter to the authority like Education Officer [Secondary]. After

hearing both the sides, the Education Officer made the order under challenge.

5. It is the contention of the petitioner that the Education Officer could not have made such order against the Management as the Management has a power to appoint any person even by giving the advertisement of such post. Already one post of Physical Instructor was filled-in, but according to the Management, said employee was not in the position to discharge his duties. Respondent No.4 having B.P.Ed. qualification was appointed as other 'physical instructor'.

6. The reply-affidavit filed by the authority, Education Officer shows that even permission for advertising the post was not taken by the petitioner, Management. On the date of filing of the petition, the proposal of Smt. Kale for approval was not submitted before the Education Officer. When the order was being made after hearing, the Management did not contend that there was no vacancy for giving posting to respondent No.3. Thus, no submission was made that

Smt. Kale was appointed by the Management on the said post. In one more affidavit, it is contended by the Education Officer that, the contention of the Management that they wanted to fill a post which was necessary to be reserved for woman candidate, cannot be accepted. On that, the Education Officer has contended that one post from S.T. category was required to be filled as there was backlog and if the Management was honestly thinking to fill the reserved post, it ought to have advertised post for S.T. Category, and from that category the post of female candidate could have been filled. It is also the contention of the Education Officer that respondent No.4-Pratiksha Kale was not possessing necessary qualification. She was not having special subjects which are included in the syllabus of standard 5th to standard 10th. Her subject was "Defence Studies".

7. It appears that even when the present proceeding was pending, Writ Petition No.3653 of 2016 was filed by respondent No.4-Pratiksha Kale to challenge the order of Education Officer, by which he

refused to grant approval to the appointment of respondent No.4-Pratiksha Kale. The copy of the Judgment delivered by this Court on 30th January, 2018 is produced on record and it shows that this Court, other Bench, directed the Education Officer to re-consider the proposal given in respect of respondent No.4-Pratiksha Kale. Due to this circumstance, the learned counsel for the Management submitted that in the present matter also similar order can be made. This proposition cannot be accepted. If the Management cannot succeed in the present matter and this Court comes to the conclusion that respondent No.3-Dilip was required to be considered for the said post, the decision of the present matter will put seal on other matter, and in that case, there will be no room to the Education Officer for re-considering the proposal in respect of respondent No.4-Pratiksha Kale. It can be said that only due to the close relationship of Pratiksha Kale with the Secretary of the Management, they took step like filing Writ Petition No.3653 of 2016, to which respondent No.3-Dilip was not party.

8. The learned counsel for the petitioner took this Court through the provisions like provisions of Sections 5 and Rule 9 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 and Rules. This Court has carefully gone through these two provisions. The provision of Section 5 of the said Act shows that the Management is expected first to consider the cases of promotion if any. Admittedly, the graduate teacher gets higher pay scale than the trained teacher. Due to this circumstance and also the policy of the Government which can be seen in the guidance issued, it was necessary for the Management to consider respondent No.3 first. The copy of guidelines issued by the Director of Education dated 27th July, 2001 is produced on record. Even in the present proceeding, the Management has admitted that in the past in the year 1997 the Management had forwarded the proposal in respect of respondent No.3-Dilip for giving him the scale of graduate teacher as he was B.Ed. The proposal was made as his subject was 'Hindi' and he was teaching this subject for all the students like

students of 5th to 10th standard. On that occasion, one other teacher was found senior, and so, respondent No.3-Dilip did not get that scale. The situation has not changed and even in the year 2004 having teacher of 'Hindi' was important and that was the need of the Institution. In spite of this circumstance, the Management appointed respondent No.4-Pratiksha Kale who happens to be daughter-in-law of Secretary of the Management. She was not having any subject which could have been taught for 5th to 10th standard. The Education Officer has specifically submitted that his permission was not obtained even for publishing the advertisement. All these circumstances show that tactic was played by the Management to see that only respondent No.4-Pratiksha Kale, a female candidate gets that post. In ordinary course, the Management ought to have considered respondent No.3-Dilip first, but the Management avoided to do so. There is nothing adverse against respondent No.3 and that can be seen from the contentions made in the petition itself. In view of the aforesaid provisions and the guidelines given by the Government and as the Government is

giving grant to this post, it cannot be said that the authority cannot supervise such appointments. In view of this, it cannot be said that the Education Officer has committed any mistake or wrong in giving directions of aforesaid nature. In the result, Writ Petition stands dismissed.

(**SUNIL K. KOTWAL, J.**)

(**T.V. NALAWADE, J.**)