

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

WRIT PETITION NO. 15351 OF 2017
WITH
CIVIL APPLICATION NO.7321 OF 2018
IN WP/15351/2017

MAROTRAO KESHAV JADHAV
VERSUS
REGIONAL DEPUTY COMMISSIONER, SOCIAL WELFARE DEPARTMENT
LATUR AND OTHERS

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Advocate for the Petitioner : Shri Kulkarni Sanket S..
AGP for Respondents 1 and 2/ State : Shri S.M.Ganachari.
Advocate for Respondents 3 and 4 : Shri Jadhav Kailas B..

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**CORAM: PRASANNA B. VARALE
AND
RAVINDRA V. GHUGE, JJ.**

DATE :- 12th September, 2018

Per Court :-

1 Heard Shri Kulkarni, learned Advocate appearing for the
Petitioner.

2 The Petitioner is before this Court challenging the order dated
11.09.2017 thereby, rejecting the proposal of the Petitioner for approval.

3 A bare perusal of the document at Exhibit F placed on record,
would show that the order is passed by Respondent No.1 on 28.07.2017
and the same is communicated to the Petitioner vide communication
dated 11.09.2017.

4 It may be necessary to refer to the background facts. The Petitioner, who was having qualifications B.Sc., B.Ed., in response to the advertisement dated 02.07.2011 for selecting the candidates as Shikshan Sevak, submitted his claim and was appointed as a Shikshan Sevak by the appointment order dated 20.07.2011 for the period w.e.f. 20.07.2011 to 19.07.2014. The Institute forwarded the proposal to the Assistant Commissioner/ Special District Social Welfare Officer, Hingoli for granting approval to the appointment of the Petitioner as a Shikshan Sevak. The proposal was pending before the Authority for a considerable period. As such, the Petitioner approached the Grievance Committee constituted for entertaining complaints of Shikshan Sevaks, by preferring his Appeal No.19/2012. The appeal was allowed by the President of the Grievance Committee by order dated 18.07.2013.

5 The learned counsel for the Petitioner submitted that subsequently in the year 2015, again the proposal was rejected. As such, the Petitioner left with no choice, but to approach this Court by filing Writ Petition No.11533/2015. Considering the rival submissions of the parties, the Division Bench of this Court vide order dated 07.03.2017 was pleased to dispose of the said writ petition by quashing and setting aside the order impugned in the petition and the Respondent Authorities were directed to reconsider the proposal for seeking approval to the appointment of the Petitioner. It was specifically made clear by the Division Bench in the

order that the Respondent Authorities shall not reject the proposal on the ground on which the impugned order was passed. The Division Bench was pleased to direct the Authorities to decide the proposal within a stipulated period of three months from the date of the order.

6 Thereafter, the Authority passed the order dated 28.07.2017 and communicated it to the Petitioner on 11.09.2017. Being aggrieved, this petition was filed and notices were issued by this Court on 09.01.2018. In spite of sufficient opportunities granted to the Respondent Authorities, no reply was filed. As such, on 17.04.2018, this Court granted some time to the learned AGP to file an affidavit in reply and further made it clear that if the reply is not filed, Respondent No.2 shall personally remain present in this Court.

7 The learned counsel for the Petitioner then submitted that though the grievance of the Petitioner was before this Court and in spite of the order of this Court, Respondent No.1/ Authority committed very mistake and passed the order on the very grounds on which the earlier order was passed. He submitted that Respondent No.1, during the pendency of this petition, passed the order afresh having no date. This order is placed on record along with Civil Application No.7321/2018. A perusal of this order would show that the hearing was taken on 07.03.2017 and the reason assigned for rejection of the proposal is that the Petitioner was possessing the qualification more than what was

required. This reason is assigned at clause 1 of the said order. It is stated that the requisite criteria is of a person having D.Ed. academic qualification whereas, the Petitioner is possessing B.Ed. academic qualification, which is higher qualification. It is not in dispute that this B.Ed. qualification is higher than the qualification D.Ed..

8 The learned counsel for the Petitioner has vehemently submitted that the order passed by the Authority is clearly unsustainable on more than one ground. Firstly, the order is passed without giving any opportunity of hearing to the Petitioner. Secondly, the order is passed by supplanting the reasons, which were not the reasons assigned in the earlier order. Thirdly, on merits also, the concerned Authority could not have passed the order holding that the Petitioner is possessing higher qualification than the required and as such, is not entitled for grant of approval.

9 The learned counsel for the Petitioner invited our attention to the Government Resolution dated 11.11.2011, placed on record along with the Civil Application, in support of his submissions. Now, perusal of this Government Resolution clearly shows that it deals with this specific issue and clause 1 made the position very clear. A bare perusal of this clause 1 would show that the reason assigned by the Authority for rejecting the proposal is clearly unsustainable.

10 In the light of the above, this writ petition was heard

yesterday. Considering the policy of the State Government reflected in the Government Resolution dated 11.11.2011 and considering the factual aspects in the matter, the learned AGP was directed to take instructions from the concerned Authority as to whether, in view of the Government Resolution, the Authority may rectify the mistake by withdrawing the order and pass an appropriate order. The only object was to see whether, better sense prevails over the authority in view of the appraisal of the position by the learned AGP, who is the Law Officer and Officer of this Court.

11 Today, the learned AGP made a statement before us that he made an attempt to establish contact with the concerned officer, who is now occupying the position as the Regional Deputy Commissioner, Social Welfare Department, Latur and the response received by the learned AGP was that the officer concerned was not ready to make any statement. Resultantly, the learned AGP was put in embarrassment and he was unable to make any statement before this Court.

12 The learned AGP also submitted that earlier affidavit in reply filed in this Court by the officer concerned, who was occupying the position at the relevant time as Respondent No.2, was not settled by the office of the Government Pleader. Thus, the learned AGP submitted that either without any approval or without any consultation with the office of the Government Pleader, the officer concerned, on it's own, filed the said

affidavit in reply in this court.

13 Considering these aspects of the matter, we are of the clear opinion that the undated order passed by the Authority referring only to the year 2018, thereby, refusing to grant approval to the Petitioner, is unsustainable even for a day. There is merit in the submissions of the learned Advocate for the Petitioner that this order suffers on many folds and the only consequence is that this order is to be quashed and set aside.

14 Accordingly, we allow this Writ Petition by quashing and setting aside the order dated 11.09.2017 as well as the order undated passed by Respondent No.1.

15 We direct Respondent No.1 to hear the Petitioner and other litigating sides to this petition, who shall appear before Respondent No.1 on 24.09.2018 (Monday) at 11:00 am and Respondent No.1 shall pass an appropriate order afresh, within FOUR WEEKS from the date of appearance of the parties before him.

16 We further make it clear that if the order is passed by Respondent No.1 in favour of the Petitioner meaning thereby, if the proposal is accepted and the approval is granted, the Respondent/ Institute and other State Authorities to take consequential steps as expeditiously as possible without wasting more time.

17 We further direct the the Director of Social Welfare Department, State of Maharashtra / the Secretary of the Social Welfare

Department, State of Maharashtra, as the case may be, to take note of our observations in this order and take appropriate steps as they may deem fit.

18 This Writ Petition is disposed of with these observations.

19 In view of the disposal of the writ petition, no orders are required to be passed separately on the Civil Application and as such, the Civil Application is also disposed of.

kps

(RAVINDRA V. GHUGE, J.)

(PRASANNA B. VARALE, J.)