

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

WRIT PETITION NO.6298 OF 2016

1. The Secretary,
Mahatma Phule Gramin Shikshan
Prasarak Mandal, Shekapur,
Tq. Kandhar, Dist. Nanded.
2. The Head Master,
Mahatma Phule Vidyalaya,
Shekapur, Tq. Kandhar,
Dist. Nanded.
3. Venkati s/o. Narayan Gitte,
Age: 26 years, Occup: Service
as Peon,
R/o. Shekapur,
Tq. Kandhar, Dist. Nanded. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer [Secondary],
Zilla Parishad, Nanded **RESPONDENTS**

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Mr.V.S.Panpatte, Advocate for the petitioners
Mr.P.N.Kutti, AGP for the Respondent/State

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 05.02.2018
Pronounced on : 20.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition is filed praying therein to quash and set aside the order dated 21.04.2016 passed by respondent no.3 – Education Officer. It is further prayed to direct respondent no.3 – Education Officer to grant approval in favour of petitioner no.3 as Peon in petitioner no.2–School forthwith and release his salary.

3] It is the case of the petitioners that, petitioner no.2 is a Secondary and Higher Secondary School, run by petitioner no.1 trust, in which classes from 5th to 12th

standards are being conducted, and the said school is receiving 100% grant-in-aid from the State Government. From the year 2013-14 onwards, the strength of sanctioned teaching and non teaching staff is 24 and 11 respectively. On account of death of one permanent employee, namely, Shivaji Kishanrao Pallewad, who was appointed from N.T. category and working on the post of Peon in petitioner no.2 - school, had fallen vacant on 04.12.2013. Thereafter, by application dated 05.12.2013, petitioner no.2 sought permission from respondent no.3 i.e. the Education Officer, so as to fill up the said vacant post of Peon, by issuing advertisement. However, neither the said application was responded, nor permission sought for was granted. On 23.12.2013, petitioner nos.1 and 2 issued an advertisement, inviting eligible candidates for interview to the vacant post of Peon.

The said interview was scheduled to be held on 30.12.2013, prescribing therein that surplus candidate, if any, sent by the Department will be given preference. Till the date of the said interview, respondent no.3 Education Officer did not send surplus candidate. Accordingly, on 30.12.2013, petitioner nos.1 and 2, after conducting interview of the candidates who attended the interview, selected petitioner no.3 for the post of Peon from NT-D category.

4] It is further the case of the petitioners that, thereafter, petitioner no.2 issued an appointment order in favour of petitioner no.3, appointing him on the post of Peon, for three years i.e. from 31.12.2013 to 30.12.2016, and since the date of appointment i.e. 31.12.2013, petitioner no.3 is in continuous service.

On 08.10.2014, petitioner no.2

submitted a proposal before respondent no.3, seeking approval to the appointment of petitioner no.3, however, respondent no.3 did not consider the said proposal for a period of 6 months. Thereafter, petitioners filed Writ Petition No.6159/2015 [The Secretary, Mahatma Phule Gramin Shikshan Prasarak Mandal & others Vs. The State of Maharashtra & others] before this Court, seeking directions against respondent no.3 – Education Officer to consider the proposal and to grant approval to the services of petitioner no.3 forthwith. This Court, by order dated 23.06.2015, directed respondent no.3 to decide the proposal on its own merits expeditiously, and preferably within four months from the date of passing of the order. However, respondent no.3 did not decide the said proposal, within stipulated period as per the directions given by this Court. Ultimately, the petitioners were constrained

to file Contempt Petition No.134/2016 [The Secretary, Mahatma Phule Gramin Shikshan Prasarak Mandal & others Vs. The State of Maharashtra & others], and this Court by order dated 26.02.2016 pleased to issue notice to respondent no.3. After receipt of notice of the above-mentioned Contempt Petition, respondent no.3 issued notice to the petitioners for hearing on 29.03.2016. Accordingly, the petitioners appeared before respondent no.3, and pointed out how the appointment of petitioner no.3 has been made by following due procedure, and also placed on record 100 point roster of the school showing position of appointments made from reserved categories and also about available vacancies. Thereafter, respondent no.3, belatedly, by order dated 21.04.2016, rejected the proposal, refusing to grant approval to the appointment of petitioner no.3, on the count that before filling in the

said post, no permission was obtained from the respondent no.3, and roster of the school was not produced.

5] Learned counsel appearing for the petitioners submits that, the reasons assigned in the impugned order passed by respondent no.3, are not sustainable inasmuch as all the documents were submitted before the Education Officer by petitioner nos.1 and 2. However, it is wrongly observed that, the petitioner-management has not submitted the copy of the letter written to the office of respondent no.3, informing about the vacancies, and also not submitted roster. Learned counsel invites our attention to the copies of the documents placed on record including copy of the caste certificate of petitioner no.3 dated 20.07.2005, copy of staff sanction order issued by respondent no.3, sanctioned staff in petitioner no.2 school for the year 2013-14, copy of

application dated 05.12.2013, made by petitioner no.2 to respondent no.3, copy of advertisement issued by petitioner nos.1 and 2 in daily 'Times of Gaurav' dated 23.12.2013, copy of appointment order issued by petitioner no.2 in favour of petitioner no.3, copy of proposal dated 08.10.2014 submitted by petitioner no.2 before respondent no.3, copy of judgment and order dated 23.06.2015, in Writ Petition No.6159/2015, copy of 100 point roster of petitioner no.2 school, and copy of order dated 21.04.2016 passed by respondent no.3, and submits that the Petition deserves to be allowed.

6] Learned AGP appearing for the respondent-State relying upon the affidavit-in-reply filed on behalf of respondent no.3 submits that the mandate of Section 5 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977

[for short 'Act of 1977'] and the Rules, 1981, has not been adhered to by the petitioner - management. The prescribed procedure is not followed. There are surplus teachers, and in view of the Government Resolution dated 6th February, 2012 and 2nd May, 2012 issued by the School Education Department, surplus teachers need to be absorbed on vacant posts. Though the Education Officer directed the petitioner-management to absorb surplus teachers, instead of absorbing surplus teachers the management has appointed petitioner no.3 without following due procedure. Therefore, the learned AGP submits that the Petition may be rejected.

7] We have given careful consideration to the submissions of the learned counsel appearing for the petitioners and learned AGP appearing for the respondent-State. With their able assistance, perused the pleadings

in the Petition, annexures thereto, and the copies of documents placed on record by the petitioners. Upon perusal of documents prima facie it appears that, letter was written by the management to the Education Officer [Secondary], Zilla Parishad, Nanded on 5th December, 2013, informing him about vacancy of one post, and requesting to permit the management to advertise the said post. A copy of the said letter is placed on record at Exhibit-C Page-16 of the compilation of the Writ Petition. There is stamp and also signature on the said letter of the employee working in Inward Section of the office of respondent no.3. It further appears that, on 23.12.2013, an advertisement was published in the news paper. The said post of Peon was supposed to be filled in from NT-D category. The petitioner no.3 appears to be from NT-D Category. The copy of the certificate showing that the petitioner no.3 is from NT-D

category is placed on record. He has been appointed pursuant to the said advertisement. If the reasons assigned in the impugned order passed by respondent no.3 are carefully perused, there is no reason stated in the impugned order that petitioner nos.1 and 2 refused to absorb the surplus teachers. Therefore, the statement made in para 3 of the affidavit-in-reply that the petitioner-institution did not absorb surplus teacher, is not traceable in the impugned order. Upon careful perusal of the copies of the additional documents, which are placed on record by the petitioner, prima facie it appears that, the mandate of provisions of Section 5 of the Act of 1977 has been fulfilled.

8] In that view of the matter, we quash and set aside the impugned order/letter dated 21.04.2016 passed/issued by respondent no.3. We direct respondent no.3 to re-consider the

proposal, seeking approval to the appointment of petitioner no.3 keeping in view the aforesaid discussion and also documents referred herein above. Petitioners shall once again submit the copies of the documents referred herein above in this judgment to the Education Officer within 10 days from today. The Education Officer shall consider the proposal afresh seeking approval to the appointment of petitioner no.3, in the light of the documents referred herein above. The entire exercise is to be done, as expeditiously as possible, however, within 6 weeks from today, including taking final decision, and communicating the said decision to the petitioners.

9] While hearing various Writ Petitions, we have noticed that the Education Officers are not taking timely decisions and as a result employees are filing hundreds of petition every year in the High Court. We

direct all the Education Officers working in Secondary as well as Primary Sections of the Government establishments, Zilla Parishads or on the establishment of other local bodies / local authorities to decide, in accordance with law/procedure, the proposals received for approvals of appointments of Assistant Teachers/Shikshan Sevaks/Class-IV employees, as expeditiously as possible, however, within eight weeks from the date of receiving/receipt of such proposals. We issue note of caution to all the Education Officers or any other Officers dealing with the cases of approval to the appointments of the employees of the aforesaid categories that, they should strictly adhere to aforesaid time limit, else they will have to face serious consequence of breach of aforesaid directions, however, in accordance with law. Copy of this judgment shall be circulated to all concern by the office of the Government

Pleader and to that effect report should be submitted in the registry within two weeks from today.

10] Rule is made absolute in above terms. Writ Petition stands disposed of accordingly.

11] List under caption 'for compliance' on 1st of March, 2018.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC