

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9369 OF 2017

Yogesh Mansubrao Pawar

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri V. S. Panpatte, Advocate for the Petitioner.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 and 2.

Shri Balaji L. Sagar Killarikar, Advocate for Respondent No. 3.

Shri P. M. Gaikwad, Advocate for Respondent No. 4

CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.

DATE : 4th July, 2018

PER COURT :

1. The proposal seeking approval to the appointment of the petitioner as a 'Shikshan Sevak' is rejected.

2. Mr. Panpatte, learned counsel submits that after following due procedure of law as contemplated under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977, the petitioner is appointed. The Headmaster has given an application dated 06.12.2013 seeking permission

from the Education Officer to fill in the post. Neither the Education Officer communicated nor responded to the application. Thereafter the advertisement was issued on 4th February, 2014, for filling in the post of Mathematics subject. The interviews were conducted and thereafter the petitioner was appointed with effect from 8th February, 2014, for teaching Mathematics subject. The learned counsel submits that the ban on recruitment would not apply to the teachers to be appointed for teaching Mathematics and Science subjects. The learned counsel relies on the Order of the Division Bench of this Court at its Principal Seat in Writ Petition No. 8587 of 2016 dated 10th July, 2017.

3. There was some dispute with regard to the receipt of the letter dated 06.12.2013, written by the Headmaster to the Education Officer. We had asked the learned A.G.P. to verify the same from the original record.

4. The learned A.G.P. submits that the original record is received and the Education Officer is present in person. After

going through the original record, the learned A.G.P. confirms that the Education Officer has received the communication from the Headmaster on 9th December, 2013, seeking permission to fill in the post. Further the learned A.G.P. submits that in view of the fact that there was ban on recruitment the petitioner could not have been appointed.

5. The Division Bench of this court at the Principal Seat at Bombay in Writ Petition No. 8587 of 2016 under Order dated 10th July, 2017, has observed thus -

“4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects of English, Maths and Science are concerned.

5. The Division bench of this Court in the cases of Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr. has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfill the backlog of backward class candidates.

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to

send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. *In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates.*

8. *We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the Constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of whose inaction the State exchequer will be burdened.*

9. *In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The*

Respondents – Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-

- (a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;*
- (b) where the appointments made for filling up vacancies in English, Mathematics and Science;*
- (c) where the recruitment is made to fulfill the backlog of reserve categories candidates;”*

6. The petitioner is appointed for Mathematics subject. Even the application was given by the Institution seeking permission to fill in the post. The Education Officer did not respond and after waiting for two months post was advertised and thereafter filled in. We had also asked whether any surplus candidates during all these years was sent to the institution. It is submitted that no such surplus candidate was forwarded to the institution for absorption.

7. Considering all the aforesaid aspects and the Order of Division Bench at its Principal Seat at Bombay referred supra, the impugned order passed by the Education Officer is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the appointment of petitioner and

shall not reject it only on the ground that permission was not sought or that there were surplus candidates or that appointment is after the Government Resolution dated 2nd May, 2012. However the Education Officer shall consider availability of the post for Mathematics subject at the relevant time and shall also confirm all other relevant aspects, such as, the roster, qualification etc. The decision shall be taken expeditiously and preferably within four (4) months.

8. Writ Petition accordingly stands disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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