

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

WRIT PETITION NO.8548 OF 2016

Vishwasrao s/o. Shankarrao Solanke
Aged 72 years, Occ-Agriculture
and life member of respondent
society r/o. Station Road,
Partur, Tq. Partur,
Dist-Jalna.

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Education Department,
Mantralaya, Mumbai 400 032.
2. The Commissioner of Education
Maharashtra State, Pune
Balbharti, Senapati Bapat Marg,
Pune, Tq. & Dist-Pune.
3. The Assistant Divisional
Commissioner, [Ma.Wa.Ka.],
Divisional Commissioner Office
Aurangabad
4. The Education Officer [Secondary],
Zilla Parishad, Jalna
Tq. & Dist-Jalna.
5. Laxmanrao Shankarrao Patil
Aged 80 years, Occ: President
of Yoganand Shikshan Prasarak
Mandal, Partur, Tq.Partur,
Dist-Jalna.
6. Laxmikant Shyamrao Limbulkar,
Aged 75 years, Occ. Advocate &

Vice President of Yoganand
Shikshan Prasarak Mandal,
Partur, Tq. Partur,
Dist-Jalna.

7. Yoganand Shikshan Prasarak Mandal
Partur, Tq. Partur, Dist-Jalna
Through its Secretary
Shri Prabhakar Gangadhar Dolarkar
[Kulkarni] Aged 65 years
r/o.Dolhara, Tq. Partur,
Dist - Jalna.
8. Vishwambar Babanrao Khose,
Aged 56 years, Occ: Service as
Headmaster of Jai Bhavani
Madhyamik Vidyalaya, Jaipur,
Tq. Mantha, Dist-Jalna.
9. Devidas s/o Shriram Thokre,
Aged 56 yers, Occ: Service as
Headmaster of Yoganand Madhyamik
Vidyalaya, Partur, Tq. Partur
Dist-Jalna.

RESPONDENTS

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Mr.Vishal Bagal, Advocate holding for
Mr.V.D.Salunke, Advocate for the petitioner
Mr.P.K.Lakhotiya, AGP for the Respondent /
State
Mr.S.M.Godsay, Advocate for respondent nos.5
to 7.
Mr.V.C.Patil, Advocate for respondent nos.8
and 9
Respondent no.4 - served.

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

Reserved on : 15.01.2018
Pronounced on : 09.02.2018

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

1] This Petition is filed with the following prayers:

- B) To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, the Respondent No.1 to 4 may kindly be directed to take action against the Respondent No.5 to 9 under the provisions of Maharashtra Reservation Act 2004 and action provided under different G.R's for illegal appointment made by the Respondent No.5 to 9 appointing 7 employees from open category violating roster where all the 7 posts are reserved specifically directing to lodge criminal cases and take further action for non compliance of reservation policy under the Act, Rules and G.R's.
- C) To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, the

Respondent No.1 may kindly be directed to take appropriate and suitable action against the Respondent No.2 to 4 for ignoring the complaints made by the petitioner as per Exhibit 'F' and for failure on their duties for not taking any action against the Respondent No.5 to 9 for violation of reservation policy under the Act, Rules and G.R's issued time to time.

2] It is the case of the petitioner that, the petitioner is life member of respondent no.7 - Yoganand Shikshan Prasarak Mandal, Partur, Taluka Partur, District Jalna i.e. the Educational Trust registered under the provisions of Bombay Public Trusts Act, 1950. The petitioner is a founder member of the said trust, and always interested in the development of the trust by adhering to the legal provisions. Respondent no.7 runs two schools, one at Partur and another at Mantha; those schools are reputed schools since long

having established in the rural area to impart education to needy students by one well known social worker in Partur City, namely, Shri Kashinathrao Ambure. It is further the case of the petitioner that, on 3rd October, 2011, Department has taken Pat Padtalani of the school run in the state whereas it was found that, there are excess teachers appointed in both the schools run by respondent no.7. The Government Resolution dated 06.02.2012 provides that the schools have to fill up the posts of teachers by following provisions of said Government Resolution, wherein the guidelines are provided for appointments of teachers. The Government Resolution dated 20.06.2014 provides appointment of teachers for subject of Mathematics, English and Science.

3] It is further the case of the petitioner that, roster in the schools run by respondent no.5 is approved by respondent

no.3 on 05.06.2012, which shows that, all the posts meant for appointment of persons from reservation category have been filled up by the persons, who belong to Open category. The Government Resolution dated 05.09.2009 provides for penal action if roster is not followed. In para 11 of the said Government Resolution, it is categorically provided to take action, as per the Maharashtra Reservation Act, in case roster is not followed. Respondent nos.5 to 9 along with management passed a resolution to appoint daughter of respondent no.8 and others on 24.03.2013. Accordingly, all 7 persons are appointed in violation of roster dated 05.06.2012. An approved roster shows that, all the 7 posts go to the reserved category according to the backlog. However, respondent nos.3 to 9 appointed all 7 persons from open category. All such appointments are contrary to the roster dated 05.06.2012. Having full

knowledge about backlog of reserved category as per roster, respondent nos.5 to 9 intentionally and deliberately appointed daughter of the Headmaster and other persons in relation, who are from the open category. The complaints dated 19.09.2014, 27.12.2014, 19.08.2015, 02.09.2015, 28.09.2015 and 10.05.2016 were made before respondent no.2. However, no action / decision has been taken by respondent no.2 on the above-mentioned complaints.

4] In view of the above facts and circumstances of the case and having full knowledge of the provisions of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 [for short 'Act of 1977'] read with the Maharashtra Reservation Act, 2004 and all above Government Resolutions issued time to time, respondent nos.5 to 9 ought to have adhered to the provisions of the Act of 1977

and guidelines issued by the Government by following it scrupulously. However, in spite of the roster showing that, all 7 posts goes to reserved categories in view of the backlog, candidates from the open category are appointed by the management and Headmaster. The intention behind it is to appoint relative of the members of the management committee and the staff members, as it is evident that daughter of Headmaster is appointed.

5] Learned counsel appearing for the petitioner submits that, the appointments are against roster approved by the Assistant Commissioner working in the office of the Divisional Commissioner, Aurangabad, on 05.06.2012. However, respondent nos.1 to 4 have avoided to decide representations made by the present petitioners. Being a diligent member of the society, the petitioner moved application before the competent authority

i.e. respondent no.2, however, in spite of several representations and consistent follow up time to time, respondent authorities have continued to cover illegalities committed by respondent nos.5 to 9. Inaction on the part of respondent nos.2 to 4, is failure in their duties, and therefore, respondent nos.2 to 4 are also liable for appropriate disciplinary action, for not taking any action against respondent nos.5 to 9, who have committed grave illegality in the appointments.

6] On the other hand, learned AGP appearing for the respondent-State relying upon the averments in the affidavit in reply filed on behalf of respondent no.4 submits that, the appointments of the persons, namely, [i] Suresh Parasram Shelke, Sevak [ST], [ii] Shyam Baliram Narwade, Sevak [SC], [iii] Murlidhar Datta Kayande, Assistant Teacher [NT-D], [iv] Ku.Varsha Vishwambhar Khose, Assistant Teacher [Open], [v] Smt.

Amrapali Shamrao Lone, Assistant Teacher [SC], [vi] Smt.Varsha Rajebhau Pawar, Assistant Teacher [Open], [vii] Anil Umaji Chavan, Assistant Teacher [VJ-A], [viii] Dharmendra Prakash Lakhkar, Assistant Teacher [OBC], [ix] Vikas Shivaji Khandagale, Assistant Teacher [Open], [x] Ranjeet Tulshiram Kanade, Assistant Teacher [NT-C], and [xi] Vishnu Achutrao Kharat, Assistant Teacher [Open], were made by the management and their individual approvals were granted by the then Education Officer [Secondary], Zilla Parishad, Jalna. After going through the above-mentioned appointments, it reveals that, the then Education Officer [Secondary], Zilla Parishad, Jalna has tried to follow the roster by appointing two persons from the backward classes on non-teaching staff, and out of these 9 teaching staff, five appointments were made from the backward classes and four were made from the open

category. As per the allegations made by the petitioner, seven persons from open category are appointed, whereas the record shows that only four teachers from open category are appointed. It is submitted that, after going through the roster verified by B.C. Cell dated 11.03.2015 and staffing pattern of both the schools run by the respondent – management, it is noticed by respondent no.4 that, the backlog is still left to be fulfilled by the management as per the roster and the reservation policy. The Government Resolution dated 11.09.2016, makes mention about the action to be taken against the schools which do not follow the reservation policy. In clause 6 of the Government Resolution dated 19.09.2016, it is mentioned that, even though school is eligible to receive grants as per the conditions laid down in the Government Resolution dated 15.11.2011, no grants shall be released if

the reservation policy for filling up the the teaching and non-teaching staff is not followed. According to the said Government Resolution, action has been taken by the office of respondent no.4 against the respondent-management by not granting grant-in-aid to the added three divisions on which the above mentioned six teachers are working. No salary has been paid to those teachers from the public exchequer.

7] Learned AGP relying upon the averments in the affidavit in reply of respondent no.3 submits that, the Headmaster of the school run by respondent no.7 institution submitted the proposal on 11.03.2015 to verify the roster. Respondent no.3, taking into account the proposal submitted by the respondent-institution, verified the roster of the school and on 11.03.2015 issued roster which is annexed to the Writ Petition at Page 59. At the time of

verification of roster, it is found that, there is backlog of one post for SC, two posts for ST, one post of VJ [A], two posts for NT [B] and three posts for OBC category. After verification of roster, the copy of the same was forwarded to the institution and the Education Officer [Secondary], Zilla Parishad, Jalna. As far as the role of respondent no.3 is concerned, it is just to the extent of verifying and certifying roster as per Reservation Act, 2004 and Government Resolution in General Administration Department dated 29.03.1997 and 18.10.1997.

8] Learned counsel appearing for respondent nos.5 to 7 relying upon the averments in the affidavit-in-reply submits that, the baseless allegations are made in the Petition. As per the present available statics, 70 posts are sanctioned, and out of which, 65 posts are filled in. As per the roster, 9 posts are excess. As per Government

Resolution dated 29th March, 1997, 34 posts from open category, and 36 posts from reservation are required to be filled in, and as such, shortfall of 9 posts from reserved category is noticed. Already action is taken by respondent no.4, thereby deducting salary grants to the extent of 20%. The statement made in the affidavit of respondent no.4 that, there is backlog of 9 posts, is not correct factual position. In fact, 5 posts from reserved category are vacant; two persons have resigned, and two posts are re-scheduled by Zilla Parishad in order to accommodate surplus teachers in other institutions, run by the Zilla Parishad. The appointments made by respondent nos.5 to 7, have been duly approved by the Education Officer, and therefore, once such approval has been granted, the question of initiating action against respondent nos.5 to 7 would not arise. Learned counsel relying upon the

averments in the further affidavit filed on 18.12.2017, pursuant to the order dated 22nd November, 2017, submits that, as far as school at Partur is concerned, additional division has been granted on 28.02.2014 for 9th and 10th standards on the basis of non-grant for the year 2012-13. In pursuance of which a Resolution was passed on 04.03.2014 and Mr.Ghandagale, Mr.Kanade and Mr.Kharat have been appointed on 04.03.2014, and their appointments have been approved by order dated 19.06.2014, by following due procedure of law. It is submitted that, as regards the school at Jaipur is concerned, additional division has been sanctioned vide order dated 07.03.2013 for 6th standard. The said additional division was on grant in aid basis, as such a Resolution was passed on 24.03.2013, and Miss Khose and Mr.Kayande have been given appointment by following due procedure of law. On account of promotion of

Mr.Patil, appointment has been given to Mr.Kayande. As per the roaster, since one post was created, Miss Khose was appointed. It is further submitted that, as far as the school at Partur is concerned, all three appointments were made on non-grant basis, whereas school at Jaipur, Miss Khose and Mr.Kayande were given appointments on grant in aid basis for the facts stated herein above. Two non-teaching staffs were also given appointment at Jaipur i.e. Mr.Songde and Mr.Shelke as Peons.

9] It is further submitted that, all the posts filled in by respondent nos.5 to 7 have been filled in as per the prevalent quota and the norms. As and when there was availability, the posts were sanctioned by the authority, and accordingly, those were filled in by following due procedure of law. As regards the objection of the petitioner in respect of non observance of the reservation

posts, it is worthless to be considered for the simple reason that, the institution has made all the endeavour to meet with the requisite requirement, however, for want of availability of the candidates from the reserved categories; those could not have been filled in. The petition is based upon roster pertaining to the year 2012-13; which has, in fact, no nexus whatsoever with the present situation. In the year 2012-13, out of 47 sanctioned posts, 46 posts were filled in whereas in 2015-16 out of 70 sanctioned posts, 65 posts were filled in. It is, as such, the number shown in the documents annexed to the petition is incorrect. All the allegations leveled and mentioned in the petition are none the less than personal vendetta to which the petition is bent upon to meet with by hook or crook. The reason for developing all this grudge by the petitioner has been mentioned in the earlier

affidavit filed by respondent no.5 to 7. It is further submitted that, after going through the affidavit in reply filed on behalf of respondent – State, respondent nos. 5 to 7 came to know that, there is an error in the staffing pattern, and as such, vide communication dated 07.01.2017 request has been made to the Education Officer, Zilla Parishad, Jalna for making requisite corrections therein. The same is pending with the respondent-State and Zilla Parishad. In the meanwhile, the petitioner has not stopped his ill-activities, and has deployed his well-wisher to get the information allegedly under the Right to Information Act. One Mr.Santosh Akhade has filed an application on 16.11.2017, thereby sought information in respect of 6-7 persons, who have been named in the petition along with the copy of Government Resolution and advertisement. The said person is from Partur and virtually has

no concern with this issue. He neither applied for appointment, nor he is eligible for the same.

10] It is further submitted that, in the back drop of filing of the petition, and the attempt of the petitioner to collect the information by using the forum of this Court, it is evident that the said person Mr.Santosh Akhade is a man deployed by the petitioner for collecting information. Therefore, learned counsel submits that, the Petition may be rejected.

11] We have considered the submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings and ground taken in the petition, annexures thereto, the replies filed by the respective respondents. It prima facie appears from the reply filed by respondent no.4 that, action has been taken

by the office of respondent no.4 against the respondent-management by not granting grant-in-aid to the added three divisions on which the above mentioned six teachers are working. No salary has been paid to those teachers from the public exchequer. We are of the opinion that, various representations filed by the petitioner with the respondent authorities needs to be considered in the light of record maintained by the respondents, and in particular respondent nos.5 to 7 in respect of the appointments of the employees, and also the record maintained by respondent no.4 by which approval is granted time to time to the appointment made by respondent nos.5 to 7.

12] In that view of the matter, we deem it appropriate to direct respondent no.2 i.e. The Commissioner of Education, Maharashtra State, Pune, to issue notices to the petitioners and respondent nos.5 to 7, and

allow the petitioner and also respondent nos.5 to 7 to file documents in support of their contentions, and also record maintained by respondent nos.5 to 7, and thereafter, take appropriate decision about grievance raised by the petitioner in his various representations. Once again it will be open for the petitioner to make comprehensive representation to respondent no.2. Respondent no.2 shall summon record from the office of respondent nos.3 and 4 in relation to the approvals granted time to time to the appointments made by respondent nos.5 to 7. Respondent no.2 shall adhere to the principles of natural justice, and after hearing the parties and perusing the documents, take appropriate decision in accordance with law/rules/procedure in respect of the grievance raised by the petitioner in his representations. It will be open for the petitioner to place on record

copy of this petition with annexures before respondent no.2. The entire exercise shall be done by respondent no.2, as expeditiously as possible, however, within 6 months from today.

13] We have not expressed any opinion on merits of the contentions raised by the parties, either in the petition or in the replies filed by the respondents, and it is for respondent no.2 to take decision on merits, and if respondent no.2 finds substance in the grievance raised by the petitioner, take appropriate action against respondent nos.5 to 7, however, as permissible and in accordance with law. The Petition stands disposed of accordingly, no order as to costs.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE