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

WRIT PETITION NO.9236 OF 2017

1. Gajanan s/o Ramchandra Gedewad,
Age: 32 years, Occu: Service as
Assistant Teacher in
Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur
2. Iresh s/o Laxman Barlawar,
Age: 27 years, Occu: Service as
Assistant Teacher in
Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur
3. Harishchandra s/o Madhavrao Patil,
Age: 27 years, Occu: Service as
Assistant Teacher in
Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur
4. Mulla s/o Shadul Chandsab,
Age: 27 years, Occu: Service as
Assistant Teacher in
Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur
5. Shivaji s/o Namdev Rautwad,
Age: 25 years, Occu: Service as
Assistant to Cook in
Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur
6. Angad s/o Baban Honwadajkar,
Age: 36 years, Occu: Service as
Peon in Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur

..PETITIONERS

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VERSUS

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special
Assistant Department,
Mantralaya, Mumbai-32
2. The Regional Deputy Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar
Social Justice Bhavan,
Near Market Yard, Latur
3. Assistant Commissioner,
Social Welfare, Latur,
Dist. Latur
4. Vimukta Jati Seva Samiti,
Vasantnagar (Kotgyal),
Tq. Mukhed, Dist. Nanded,
Through its Secretary
5. Secondary Ashram School,
Sullali-Dongargaon,
Tq. Jalkot, Dist. Latur,
Through its Head Master

..RESPONDENTS

Mr V. S. Panpatte, Advocate for petitioners;
Mr S. S. Dande, A.G.P. for respondent Nos.1 to 3;
Mr I. D. Maniyar, Advocate for respondent Nos.4 & 5

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 12th October, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of the respective parties.

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2. The petitioners are challenging the order dated 24th April, 2017 whereby the proposal for according approval to their appointments is rejected. Petitioners no.1 to 4 are in the category of teaching staff i.e. teachers, whereas petitioners no.5 and 6 are non-teaching staff members, namely, Cook and Peon, respectively.

3. Mr Panpatte, learned Counsel appearing on behalf of the petitioners vehemently submitted that the petitioners were appointed in respondent no.5 ashram school by following due procedure and in spite of the necessary material submitted to the respondents – authorities, on a mechanical consideration, the order of rejection of approval to the appointments of the petitioners is passed. Mr Panpatte submitted that the grounds assigned for rejection are, (i) no permission is sought for from the authority for issuing the advertisement for filling up the posts; (ii) the institute failed to call for the list of the available candidates from the Tribal Department; (iii) there was backlog existing in the institute; (iv) though there were employees available who were declared surplus, without absorbing them the petitioners were appointed. Ground No. (v) is reiteration of ground No.(iv) and ground No.(vi) is the institute management failed to submit the proposal through the appropriate authority and the proposals are directly submitted to the regional authority, namely, Regional Deputy Director, Social Welfare, Latur.

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4. Mr Panpatte, by inviting our attention to the documents placed on record submitted that the management institute sought permission for issuing the advertisement as the posts had fallen vacant. Mr Panpatte, by inviting our attention to the copy of document, namely, outward register placed on record at page 131 (Exh.R-1) submitted that the communications were forwarded to advertise these posts in the newspaper and the reference to those communications is at Sr. Nos.84, 119, 192, 222 and 28 of the said register. Mr Panpatte submitted that as there was no response from the authorities, the management was left with no choice but to issue advertisements in the newspaper and these advertisements were issued in the newspapers dated 28th May, 2012, 17th February, 2013, 20th September, 2012 and 21st June, 2016. Copies of said advertisements are placed on record.

5. Mr Panpatte, by inviting our attention to the affidavit in reply filed on behalf of the management submitted that even a communication was forwarded to the Assistant Director of District Employment Exchange, Nanded and it was submitted that certain posts are fallen vacant and the management is in need of appointing the teachers. These posts have fallen vacant due to retirement of the employees on attaining the age of superannuation. The copies of documents dated 18th May, 2012, 10th September, 2012, 10th June, 2016 and 14th February, 2013 are placed on record at Exh.R-1 to the affidavit in reply filed by the management.

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6. Mr Panpatte then submitted that even the very ground raised in the impugned order about existence of backlog is not sustainable and the learned Counsel invited our attention to the chart approved by the Director of B.C. Cell wherein the reference is made to the appointment of the petitioners who are belonging to reserved categories. This chart is at page 150 onwards. Then Mr Panpatte also submitted that at page 156 the Additional Commissioner of the B.C. Cell approves the position of non-existence of backlog as persons belonging to various categories were appointed. The said chart referred to that very position and there is no substance in the objection in respect of ground No. (iii). Mr Panpatte then submitted that though the rejection orders states that the management failed to absorb surplus teachers till date in spite of various communications to the authorities making aware the authorities that the management is filling up the posts, the authorities were keeping complete silence and till date not a single candidate is referred to by the Education Department to the institute who is declared as surplus and who is to be absorbed by the management. Thus, it is the submission of Mr Panpatte that this objection is raised only for the sake of objection without there being any substance therein.

7. Mr Panpatte submitted that the last ground raised for rejection is, proposals are submitted directly to the regional office and not through the proper channel, namely, the Assistant Commissioner, Social Welfare. Mr Panpatte invited our attention to the documents placed on record along with

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the petition itself. The communication dated 10th May, 2016 shows that a proposal is submitted to the office of the Assistant Commissioner, Social Welfare informing the authority that the petitioners are appointed and they have completed their period of service for three years and the authority was requested to grant them continuity in service. This communication is addressed to the Assistant Commissioner, Social Welfare himself and thus this ground raised for rejection is clearly unsustainable.

8. Having regard to the above referred material, we are of the clear opinion that the learned Counsel for the petitioners has made out a case and the rejection order dated 24th April, 2017 is unsustainable. Resultantly, writ petition is allowed in terms of prayer clauses (B) and (C). Considering the fact that the appointments of the petitioners are of the year 2012, the authorities to take appropriate steps as expeditiously as possible.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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