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

WRIT PETITION NO.10659 OF 2017

1. Sandip s/o Sahebrao Magare,
Age: 38 years, Occu: Service,
R/o N-13, C-42/02, Bharat Nagar,
HUDCO, Aurangabad,
Dist. Aurangabad

2. Dongarsing s/o Mansing Rabade,
Age: 31 years, Occu: Service,
R/o Shivaji Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad

..PETITIONERS

VERSUS

1. The State of Maharashtra,
School Education & Sports Department,
Mantralaya, Mumbai-32,
Through its Secretary

2. The Director of Education,
Maharashtra State, Central Building,
Dr. Annie Basant Marg,
Pune-1

3. The Deputy Director of Education,
Aurangabad Region, Aurangabad

4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad

5. Bhartiya Shikshan Sanstha,
N-12, HUDCO, Aurangabad,
Through its Secretary

6. Ramkrishna Secondary & Higher Secondary
School, Sillod, Tq. Sillod, Dist. Aurangabad
Run by - Bhartiya Shikshan Sanstha,
Aurangabad through its Head Master

..RESPONDENTS

Mr S. C. Yeramwar, Advocate for petitioners;
Mr A. S. Shinde, A.G.P. for respondent No.1 to 4;
Mr A. V. Hon, Advocate for respondent Nos. 5 and 6

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**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 2nd July, 2018

ORAL ORDER:

Heard Mr Yeramwar, learned Counsel appearing for petitioners, Learned A.G.P. appearing for respondent Nos.1 to 4 and Mr A.V. Hon, learned Counsel appearing for respondent Nos.5 and 6.

2. As a limited controversy is raised in the petition, the petition is taken up for hearing and disposal at the stage of admission with the consent of learned Counsel for the respective parties.

3. The submission of learned Counsel for petitioners is, the petitioners were appointed in respondent No.6 - School, being run by respondent No.5 – Institute/Shikshan Sanstha. The petitioner No.1 - Sandip Sahebrao Magare was appointed on the post of 'Assistant Teacher' by an order dated 28th December, 2009. He is a candidate belonging to Scheduled Castes category and appointment order also refers to the fact that he is from the Scheduled Castes category. The appointment order then states that the appointment is for two years. The appointment of petitioner No.1 was approved by the communication dated 31st March, 2011. Then there is continuity in approval by communication dated 20th April, 2012.

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4. Similar is the case of petitioner No.2. He was appointed in the year 2012 as an 'Assistant Teacher' as a candidate belonging to Scheduled Tribes category. His appointment was also approved. It is submitted by the learned Counsel for the petitioners that initially, respondent No.6 - School was being run by respondent No.5 on permanent non-grant basis.

5. Our attention is then invited to the Government Resolution dated 19th August, 2014. By the said Government Resolution, the State Government thought it fit to frame the policy of admitting the schools for grants, which were initially permitted to be run on permanent non-grant basis. Needless to state that the schools would receive the grants stage-wise i.e. subject to the appraisal and assessment, the school would receive the grants at the stages of 20%, 40%, 60%, 80% and 100%.

6. Perusal of the Government Resolution dated 19th August, 2014, makes it clear that by the said Government Resolution, the State Government declared 333 schools, 769 classes and 1094 teachers for admissibility of grants. The Government Resolution then makes it clear that these schools would be entitled for the grants, subject to compliance of the conditions and norms prescribed by the State Government. Clause (2) of the decision of the Government is important and it reads that, even if the school succeeds in assessment, the admissibility to the grants would be subject to

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filling up all the vacant posts of such candidates belonging to the Backward Class, Scheduled Castes and Scheduled Tribes, etc. It is further made clear that if the school fails to appoint requisite posts of teachers in the respective reserved category, the school will not be admissible for any grants.

7. In the enclosed list of Government Resolution dated 19th August, 2014, the names of respondent Nos.5 and 6 find place at Sr. No.106. The Government Resolution dated 19th August, 2014 is clarified in the subsequent notification of the State Government, dated 3rd April, 2017, which is also placed on record at Exh.H. The communication dated 3rd April, 2017 states that with a view to achieve the object of the Constitution in respect of the reservation policy, the action would be initiated against such Institutes, who have failed to fill up the posts available for reserved category candidates. The Circular further states that it is observed that certain Institutes had filled up the posts, which were vacant for reserved category candidates by appointing the Open category candidates and it further states that if the said appointments are made by the institute by flouting the norms, such appointments and approvals granted would be treated as illegal. Then the communication states that the Education Officer to take steps for cancellation of such illegal appointments.

8. It was an attempt of the learned Counsel for the petitioners to submit before us that the petitioners were duly appointed and their appointments

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were approved and respondent No.5 - Institute was made admissible to the grants. In view of these facts, the salary grants to the petitioners be directed to be released.

9. Learned Counsel for the petitioners invited our attention to the representations submitted by these petitioners to the Education Officer (Secondary), Zilla Parishad, Aurangabad as well as to the Deputy Director of Education with positive recommendation of the Education Officer. Our attention is also invited to the proposal forwarded by the Deputy Director of Education, Aurangabad, Division Aurangabad to the Director of Education (Secondary) and Higher Secondary Education Directorate, Maharashtra State, Pune dated 30th March, 2017. Then our attention is also invited to the representation to the Honourable Minister, Education Department, dated 24th April, 2017. The learned Counsel for the petitioners, in view of these submissions prayed for allowing the petition in terms of prayer clause (B).

10. The learned A.G.P. fairly submitted that the Government Resolutions and Circulars are issued by the State Government. He submitted that the State Government, with an object to see that the reservation policy is followed in letter and spirit, issued the communication dated 3rd April, 2017. It was the submission of learned A.G.P. that the petitioners would be entitled for their salary qua the release of 20% admissible grants to the Institute, only when the Institute complies with the requisite norms of the policy under Government Resolution dated 19th August, 2014.

11. Mr Hon, learned Counsel for respondent Nos.5 and 6 submitted that the petitioners have not placed on record all the relevant facts and certain facts which are placed before this Court, are not in consonance with the record. It was the submission of Mr Hon, learned Counsel for respondent Nos.5 and 6 that the petitioners' appointments were on the post falling vacant in the Open Category candidates. As such, the appointment of the petitioners itself is an appointment in question and therefore, respondent Nos.5 and 6 may not grant the claims raised by the petitioners only on the ground of their initial appointment.

12. In our opinion, it may not be necessary for us to go into the issue raised by Mr Hon, learned Counsel for respondent Nos.5 and 6. The admitted fact is that the policy is framed by Government Resolution dated 19th August, 2014. The petitioners have approached the competent authority of State of Maharashtra for raising their grievance by way of representations. The claim of these petitioners is pending before the Director of Education. The Director of Education is yet to decide the claim of these petitioners and if the Director of Education is directed to decide the claim of the petitioners on its own merits, by giving an opportunity to respondent Nos.5 and 6 of being heard, would be an exercise to meet the ends of justice and at the same time causing no prejudice to the contesting parties.

13. In view of the above referred fact situation, we dispose of the petition by directing the Director of Education (Secondary and Higher Secondary) to decide the representation forwarded to him on 12th July, 2017, through the Deputy Director of Education, Aurangabad Region, Aurangabad, within 8 weeks from the order of this Court. The Director of Education to grant opportunity of hearing to respondent No.5 and 6, if they approach to the Director of Education by written submission seeking such permission within three weeks from today. The petition is disposed of accordingly. Interim order, if any, to continue till then.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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