

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

WRIT PETITION NO.19 OF 2017

1. Mahendra Madhavrao Salunke,
Age 43 years, Occu. Service.,
R/o Killari, Tal. Ausa, District Latur.
2. Archana d/o Balaji Jawadwad,
Age 29 years, Occu. Service,
R/o Killari, Tal. Ausa, District Latur.
3. Sachin s/o Bhausahab Suryawanshi,
Age 33 years, Occu. Service,
R/o Killari, Tal. Ausa, District Latur. ... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary,
School Education and Sports
Department, Mantralaya, Mumbai
2. The Education Officer (Secondary),
Zilla Parishad, Latur.
3. Shri Shiv Chhatrapati Charitable Trust,
Killari, Tal. Ausa, District Latur,
through its Secretary
4. Shri Shivaji Vidyalaya,
Killari, Tal. Ausa, District Latur,
through its Head Master ... RESPONDENTS

.....
Shri V.D. Gunale, Advocate for petitioner
Shri C.S. Kulkarni, A.G.P. for State
Shri A.N. Sabnis, Advocate for respondents No.3 and 4
.....

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

DATED : 25th SEPTEMBER, 2018.

ORAL JUDGMENT (PER PRASANNA B. VARALE, J.):

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. The petitioner challenged the order passed by the Education Officer (Secondary), Zilla Parishad, Latur dated 7.9.2016, whereby the proposal submitted for approval to these petitioners is rejected/ turned down. Learned counsel Mr. Gunale submitted that, the petitioner No.1 Mahendra Madhavrao Salunke was a candidate from Open Category and was appointed in the year 2013 as a Shikshan Sevak to teach Science subject, petitioner No.2 Archana d/o Balaji Jawadwad is a candidate from Scheduled Tribe category and was appointed to teach Hindi subject and was having academic qualification of B.A. B.Ed. at her credit, whereas petitioner No.3 Sachin Bhausaheb Suryawanshi is a candidate from N.T. - D category and was appointed to teach Mathematics subject.

3. Mr. Gunale invited our attention to the appointment order issued in favour of these petitioners, placed on record at

Exhibit D Collectively. These orders are passed on 1.7.2013. Mr. Gunale then submitted that, the requisite staff sanction and staffing pattern was approved and the copy of the approval of staffing pattern is also placed on record at Exhibit E. Learned counsel Mr. Gunale then submitted that the proposal for approval to the appointment of these Teachers/ Shikshan Sevaks was submitted to the Education Officer (Secondary) on 11.9.2013 by the institute and for considerable long period there was no decision on the proposal. As such, the petitioners are left with no choice than to approach this Court by filing Writ Petition. Our attention is invited to the order passed by the Division Bench on 19.7.2011 in Writ Petition No.5830/2016.

4. In view of the grievance raised by the petitioners, the Division Bench directed respondent No.2 to take decision on the proposal submitted by respondents No.3 and 4 on 11.9.2013 as expeditiously as possible and preferably within 12 weeks from the date of order. The Division Bench further made it clear in the order that in case the decision is favourable to the petitioners, further process of processing the bills, approval etc. be completed by the respondent No.2 within two weeks thereafter. The petition was accordingly disposed of.

5. Mr. Gunale then submitted that the Education Officer

called upon the parties for hearing which was scheduled before the Education Officer on 29.8.2016. Though all the necessary documents were submitted to the Education Officer for his perusal, the Education Officer, only pressing insistence on the fact that these appointments were made during a ban period, rejected the approval. Mr. Gunale, the learned counsel submitted that the decision of the Education Officer is clearly unsustainable. Mr. Gunale then submitted that, the issue was before this Court and in view of the judgment at the principal seat as well as the judgment delivered by the Bench at Aurangabad, the issue is no more *res integra*. Our attention was invited to the judgment and order passed at principal seat in a bunch of petitions namely Writ Petition No.8587/2016 and connected Writ Petitions. Mr. Gunale also invited our attention to the order passed by us in Writ Petition No.3945/2017, dated 20.8.2018. The learned counsel Mr. Gunale submitted that, the petitioners are similarly circumstanced with these petitioners in the bunch of petitions as well as in Writ Petition No.3945/2017 and prayed that the petition be allowed and the order impugned in the petition, passed by the Education Officer be quashed and set aside.

6. Mr. Sabnis, learned counsel appearing for respondents No.3 and 4 is not disputing the factual aspect and he submits that, though affidavit-in-reply is not filed, the respondents No.3

and 4 be permitted to place on record a document to show that the respondent No.4 forwarded a communication to the Education Officer seeking his permission to publish advertisement. The copy of the communication is taken on record and marked "X" for identification. Perusal of the communication shows that, the respondent No.4 Head Master informed the Education Officer (Secondary) that one Assistant Teacher Mr. Pachpatte and other Assistant Teacher Mr. Jadhav, teaching Mathematics and Hindi subjects respectively, stood retired on 30.5.2013 and 30.6.2013 respectively; whereas a post was vacant due to sudden demise of one Mr. Shinde. In view of these facts, the Education Officer was requested to grant permission to publish advertisement. Along with this letter, the seniority list and the sanctioned staffing pattern was also submitted to the Education Officer.

7. The learned A.G.P., while opposing the petition, submits that, the Education Officer took into consideration the fact that the appointments to the petitioners were without seeking permission from the authority and though there were surplus teaches available, these petitioners were appointed.

8. On hearing the learned counsel with their rival submissions, we find considerable merit in the submissions of Mr. Gunale, learned counsel appearing for the petitioners. Though

the learned A.G.P. opposed the petition on the ground that no prior permission from the Education Officer was obtained, and this was a factual aspect referred to in the order, we are unable to accept the submission of the learned A.G.P. on the backdrop of communication placed on record, dated 20.6.2013. If the fact of falling vacancies on account of retirement and death of the teachers was brought to the notice of Education Officer (Secondary) with a request to publish advertisement, then the Education Officer cannot turn back to this material and submit that without seeking his permission the appointments were made. The second ground in the order states about the availability of surplus teachers. Now this ground also fails in view of the communication dated 20.6.2013. If the Education Officer was apprised of the intention of the management to appoint Assistant Teachers, at that point of time itself the Education Officer should have objected the management institute and could have directed the management institute to first accommodate the surplus teachers, but such action is not taken by the Education Officer. The only reason assigned for the ultimate order dated 7.9.2016 is having availability of the excess teachers and appointment during ban period. Insofar as appointment during ban period, is dealt with in detail in the judgment delivered at the principal seat in bunch of petitions and we have referred to the same in our order in Writ Petition No.3945/2017.

As such, same is not reiterated. Insofar as the reason of excess teachers, already we have dealt with this ground of opposition by the learned A.G.P. Considering the factual aspects submitted before us by the learned counsel Mr. Gunale for the petitioners, and considering the judgments at principal seat and our order in Writ Petition No.3945/2017, the only and inescapable conclusion can be drawn that the petition deserves to be allowed.

9. Accordingly, Writ Petition is allowed in terms of prayer clause (C) and disposed of. Rule is made absolute in above terms.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-

Faridkhan
Mahammadkhan
Pathan

Digitally signed
by Faridkhan
Mahammadkhan
Pathan
Date:
2018.09.27
11:09:50 +0530