

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 9370 OF 2013

Deepak Nagnath Kanje

..

Petitioner

Versus

The State of Maharashtra and others

..

Respondents

Shri. U. R. Awate, Advocate h/f Talekar and Associates for Petitioner.

Shri. V. S. Badakh, A.G.P. for Respondent Nos. 1 to 3.

Shri. N. P. Patil Jamalpurkar , Advocate for Respondent No. 5.

CORAM : S.V. GANGAPURWALA AND

R. G. AVACHAT, JJ.

DATED : 25th October, 2018

PER COURT:

. The proposal seeking approval to the appointment of the petitioner is rejected. Basically on the ground that the post was not admissible.

2. Mr. Awate, the learned counsel submits that the petitioner is appointed for the first time in the year 1999 and every year till the 2005 the approval was granted to the appointment of the petitioner on year to year. The petitioner possesses qualification of B. Ed. Since the date of

appointment. Subsequently the petitioner also obtained the qualification of D. Ed. According to the learned counsel thrice the recognition of the Ashram School was cancelled and each time the subsequently the permission was granted to run the ashram school to the management. The learned counsel submits that, only because staffing pattern was not sanctioned at the relevant time, the order is passed. The staffing pattern is sanctioned in the year 2011 and subsequently also. The petitioner is entitled to get the approval.

3. Mr. N. P. Patil Jamalpurkar, the learned advocate for the management supports the contention of the petitioner.

4. Mr. Badakh, the learned Assistant Government Pleader for respondents/State submits that the post on which, the petitioner is appointed is not admissible. There is backlog of one SC and ST post. Initially approval is granted to the petitioner on year to year basis and no permanent approval was granted. The order has been rightly passed by the Assistant Commissioner, Social Welfare. The management has given appointment to other teacher namely Attal Dhanure also. The petitioner can not be declared surplus as he was never granted permanent approval. It is for the management to pay the salary of the petitioner. The State is

not liable for the same. The recognition of the Ashram School was initially withdrawn on 22.05.2003. It was subsequently stayed. Since 2005 the strength of the students has reduced. Since year 2005-2006 the post of Assistant Teacher claimed by the petitioner is not admissible due to reduction of strength of students. Since 2005 till date post of Assistant Teacher is not admissible.

5. Mr. Rodge, the learned advocate appears for the intervener one Mr. Khushal Manke and submits that he is the only person working on reserved post of N.T. and others are from open category. The service of the intervener is approved. The petitioner has no right to claim approval.

6. We have heard the submissions canvassed by the learned counsel for respective parties.

7. The Staffing pattern, it appears that is subsequently approved by the Social Welfare Department. While passing the impugned order the roster has not been considered. Whether the post was admissible for open category candidate, the seniority of the petitioner, qualification of the petitioner all these aspects have not been considered while passing the impugned order. It also appears that the recognition of the Ashram

School was cancelled in the interregnum. While considering the case of the approval, the seniority, the qualification, the roster and staffing pattern will have to be considered and it is only if as per approved staffing pattern, the post is admissible and all other conditions are complied, such as, qualification and roster, then the case for approval can be consider. All these aspects does not appear to have been considered while passing the impugned order.

8. In light of the above, the impugned order is quashed and set aside. The Assistant Commissioner Social Welfare, Latur/competent authority shall decide the proposal seeking approval to the appointment of the petitioner by considering all the aforesaid aspects and shall take decision within a period of six (06) months from today. The management and the intervener so also the petitioner can represent themselves before the competent authority. The writ petition is disposed of. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

ass/wp 9370.13