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

WRIT PETITION NO. 45 OF 2017

Pushpa D/o Dhondiram Nilpatrewar,
Age: 26 years, Occ: Service,
R/o. CIDCO, New Nanded,
Tq. Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department
Mantralaya, Mumbai-32
2. The Divisional Deputy Director of
Education, Latur Division, Latur
3. The Education Officer (Primary),
Zilla Parishad, Nanded
4. Shri Chhatrapati Shivaji Shikshan
Sanstha, Hatrala, Tq. & Dist. Nanded
Through its Secretary
5. Kusumtai Primary School,
CIDCO, New Nanded,
Tq. Dist. Nanded,
Through its Headmaster

..RESPONDENTS

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Mr V.D. Gunale, Advocate for Petitioner;
Mr S.M. Ganachari, A.G.P. for Respondent Nos.1 & 2;
Mr N.S. Kadam, Advocate for respondent No.3;
Mr A.N. Sabnis, Advocate for respondent Nos. 4 & 5

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**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 5th DECEMBER, 2018

ORAL ORDER:

Heard Mr. Gunale, learned Counsel appearing for the petitioner, learned A.G.P. for respondent Nos. 1 and 2, Mr. Kadam, learned Counsel for respondent No.3 and Mr. Sabnis, learned Counsel for respondent Nos. 4 and 5.

2. By way of present petition, the petitioner is challenging the order dated 18th November, 2015 issued by respondent No. 3 -Education Officer (Primary), Zilla Parishad, Nanded, whereby the approval to the appointment of the petitioner as '*Shikshan Sevak*' is cancelled.

3. Brief facts giving rise to the present petition can be summarized as follows :

The petitioner having possessed the requisite qualification of H.S.C. D.Ed. responded to an advertisement issued by respondent No.4 institute for appointment on the post of a teacher falling vacant due to retirement of teacher Smt. Vatsala V. Joshi. The petitioner staked her claim as a candidate belonging to the Special Backward Class. The petitioner is possessing validity certificate issued by the competent Scrutiny Committee holding that she belongs to *Padmashali* caste which

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is recognized as Special Backward Class. The petitioner was subjected to an interview by the local selection committee and she was selected as a successful candidate. A resolution was passed in favour of the petitioner to appoint her and on 13th August, 2012, she was appointed as '*Shikshan Sevak*' on probation for a period of three years. The copies of the appointment order and the resolution are placed on record.

4. Respondent Nos.4 and 5 submitted a proposal for grant of approval to the appointment of the petitioner to the Education Officer (Primary) along with necessary documents on 20th October, 2012 and thereafter sent reminder letters on 28th December, 2012, 20th May, 2013 and 15th July, 2013. The appointment of the petitioner was approved on 5th December, 2013. The petitioner was receiving honorarium from 2012 to 2015 @ Rs.6000/- per month.

5. The petitioner served with a notice dated 25th August, 2014 to remain personally present before the Education Officer for hearing scheduled on 8th September, 2014. It was stated in the notice that an inquiry is conducted and inquiry committee found that the approval granted to the appointment of the petitioner is an illegal approval. The petitioner and the headmaster attended the hearing along with entire record and submitted their respective replies. The Education Officer by giving a reference to letter dated 29th October, 2014 issued by the Deputy

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Director of Education, cancelled the approval vide order dated 5th December, 2013. The another reason assigned in the communication was, as the appointment of the petitioner was after 2nd May, 2012 (i.e. ban period), appointment is illegal.

6. Being aggrieved by the said order, the petitioner had approached this Court by filing Writ Petition No.10754 of 2014. A copy of the order passed by the Division Bench of this Court dated 1st July, 2015 is placed on record at Exhibit-G. The Division Bench found that no opportunity of hearing was granted to the petitioner. As such, the petitioner was relegated to the Education Officer. The parties were permitted to file their replies before the Education Officer and they were directed to appear on 15th July, 2015 before the said authority and the Education Officer was directed to pass order afresh. In view of the directions of the Division Bench of this Court, the parties appeared before the Education Officer on 15th July, 2015. The Education Officer again cancelled the approval granted to the appointment of the petitioner.

7. The submission of Mr. Gunale, learned Counsel for the petitioner is, the order passed by the Education Officer impugned in the petition is unsustainable on more than one grounds. Mr. Gunale, learned Counsel submitted before us that though the Division Bench in earlier round of litigation directed the Education Officer to pass order afresh, the

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Education Officer only re-iterated the very grounds which were the grounds in the earlier order which was the subject matter of Writ Petition No. 10754 of 2014. Mr. Gunale, learned Counsel further submitted that the Education Officer, by way of mechanical approach, re-iterated the ground of the availability of surplus teachers and this ground is also unsustainable in view of various orders of this Court.

8. Per contra, Mr. Kadam, learned Counsel appearing on behalf of respondent No.3 - Education Officer (Primary), Zilla Parishad, Nanded supported the order impugned in the petition.

9. On the rival submissions of learned Counsel for the respective parties and with their assistance, we have gone through the material placed on record. On perusal of the material placed on record, it can safely be stated that the petitioner is possessing the requisite qualification and also having supportive documents to accept the contention that she is a candidate belonging to *Padmashali* caste and a candidate belonging to Special Backward Class. The copies of staffing pattern show that there was backlog of two posts available in the school. The other documents placed on record shows that an advertisement was issued by respondent No. 4 in newspaper i.e. daily ' Prajawani ' on 5th August, 2012, calling upon the eligible candidates for appointment to the post of Assistant Teachers from the reserved category. The petitioner was appointed by an

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order dated 13th August, 2012 and her selection was approved through the school committee under the resolution dated 18th August, 2012. The petitioner joined services on the very date i.e. on 13th August, 2012.

10. Then there are copies of submission and approval, reminders and initial order dated 5th December, 2013. On 24th August, 2014, as stated above, the petitioner was faced with a notice. It may be useful to refer to certain observations of the Division Bench in order dated 1st July, 2015 passed in Writ Petition No. 10754 of 2014 when a challenge was raised for cancellation to the earlier approval, which read thus:

" 5.It is submitted that after getting enquiry report, the Education Officer issued notices and after hearing the petitioners, the approvals have been cancelled after finding the appointments being illegal and not in consonance with the well established procedure, so also against the policy, Rules and the norms. It does not transpire that the Education Officer, at any material point of time has given copy of enquiry report or part of the enquiry report to the concerned petitioners so as to make them aware of the ground on which they are required to file their say or to put forth their ground. Nor the notices issued to the petitioners calling them for hearing contained any ground on which the Education Officer is contemplating to cancel their approval. Without making the petitioners known of the ground on which their approval is sought to be cancelled, the purpose of hearing was only a farce and would not serve any purpose. Such procedure would not tantamount to adhering to the principles of natural justice".

11. It is also interesting to refer to the directions of the Division Bench in the order referred supra and particularly clause IV of the order, which reads thus:

"IV. In case the Education Officer seek to raise some other ground against the petitioners, i.e. apart from the enquiry report, then the Education Officer shall bring the said ground to the notice of the said petitioners in advance so as to give opportunity to the petitioners to reply to the same."

12. On the backdrop of above referred documents and the order of Division Bench of this Court, if the order impugned in the petition is perused, we find merit in the submission of Mr Gunale, learned Counsel for the petitioner.

13. Though the Education Officer in his order dated 18th November, 2015 refers to the earlier order of the Division Bench of this Court in Writ Petition No. 10754 of 2014, reiterates the very earlier grounds. Interestingly enough, though the Education Officer states in his order that the staffing pattern on the backdrop of roster point is approved, reiterating the ground that the institute failed to absorb the surplus teachers, cancelled the approval, the fact remains that at no point of time, the respondent - institute was informed about the availability of the surplus teachers even though the proposal was initially submitted to the Education

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Officer and the Education Officer granted approval. It is not in dispute that in numerous petitions filed in this Court challenging the order of cancellation of approval on the ground that either the appointments were made in ban period or the surplus teachers are not absorbed, the Division Benches of this Court took a consistent view that these grounds are not sustainable when the candidates who are appointed from the reserved category to teach subjects like English, Science and Mathematics.

14. On the backdrop of the facts namely, initially the petitioner was appointed by following due procedure and after sending reminders, the approval was granted in favour of the petitioner. Now, the ground is assigned in the order impugned that the institute failed to absorb the surplus teachers. Then, the Education Officer also observed that the order passed by the Division Bench of this Court in certain writ petitions having no relevance in the present matter. It would be relevant to refer to the certain observations of the Division Bench made in paragraph No. 6 of the order dated 24th April, 2018 passed in Writ Petition No.11390 of 2016, which read thus :

"6. A perusal of the material placed on record would reveal that even in respect of those teachers, though prior permission was sought by the management, the Education Officer was sitting tight over the issue and neither granted permission nor rejected the permission. In that view of the

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matter, the management could not be expected to sit idle and wait till the Education Officer wakes up from his slumber and communicate either of the decision to the management."

15. It is also interesting to note that an affidavit in reply filed in this Court on behalf of respondent No.3 and though it is stated in the said affidavit in reply that it was noticed that there were 248 surplus teachers at the relevant time, affidavit in reply is silent on the aspect as to whether such availability of surplus teachers was informed to the institute at any point of time and on the backdrop of this fact, it would be relevant to refer to the observations of the Division Bench of this Court in the order dated 5th May, 2012 in bunch of petitions i.e. Writ Petition No.9885 of 2011 and other connected petitions of which reference is made in the order of the Education Officer. The Division Bench was pleased to observe in paragraph No.9 of the said order as follows :

"9. If the Education Officer would have intimated the managements about the availability of surplus teachers, then the managements would not have appointed the petitioners. The record does not show that any such intimation was given after the application was submitted by the managements. In absence of it, no fault can be found with the managements in proceeding further in advertising and appointing the petitioners as *Shikshan Sevaks*."

16. Now, on the backdrop of the observations of the Division Bench,

the statement in the order impugned in the petition that the decision in Writ Petition No.9885 of 2011 is not relevant in the matter of the petitioner, only shows mechanical approach of the Education Officer while cancelling the approval.

17. Considering the above referred aspects, we are of the opinion that learned Counsel for the petitioner has made out a case. Resultantly, writ petition is allowed. Needless to state that the order impugned in the petition is quashed and set aside.

(MANGESH S. PATIL, J.)

(PRASANNA B. VARALE, J.)

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