

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

WRIT PETITION NO.11046 OF 2016

1. Mahatma Phule Magasvargiya
Shikshan Sanstha, Telwadi,
Tq. Kannad, Dist. Aurangabad
Through its President.
2. Anita Uttamrao Rathod,
Age: 36 years, Occup. Service as
Laboratory Attendant,
r/o. Girija Mata Complex,
Pishor Road, Kannad,
Tq. Kannad, Dist. Aurangabad.
3. Dipak s/o. Namdeo Chavan,
Age: 31 years, Occup: Service as
Assistant Teacher,
r/o. Sidharth Colony,
Hiwarkheda Road, Kannad,
Tq. Kannad, Dist. Aurangabad.
4. Vijay s/o. Karbhari Ghuge,
Age: 34 years, Occup: Service as
Assistant Teacher,
r/o. At Khullod, Post Undangaon,
Tq. Sillod, Dist. Aurangabad.
5. Subhash s/o Devchand Rathod,
Age: 34 years, Occup: Service as
Cook, r/o. Umarkheda,
Tq. Kannad, Dist. Aurangabad **PETITIONERS**

VERSUS

1. The State of Maharashtra
Through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai-32.

2. The Director,
Directorate of Vimukta Jatis,
Nomadic Tribes and Other Backward
Classes Welfare, Maharashtra State,
Pune-1.
3. The Regional Deputy Commissioner,
Social Welfare Department,
Aurangabad.
4. Assistant Commissioner,
Social Welfare, Aurangabad. **RESPONDENTS**

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Mr.V.S.Panpatte, Advocate for the Petitioners
Mr.S.S.Dande, AGP for Respondent Nos.1 to 4 /
State

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 08.02.2018
Pronounced on : 21.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent of
the parties.

2] It appears that, during pendency of
this Petition, respondent no.3 passed the
order on 18th November, 2017 [Exhibit-R1

Page-61]. The counsel for the petitioners sought leave to amend the Petition so as to take exception to the said order. Accordingly, leave to amend the petition was granted. Pursuant to the leave granted by the High Court, learned counsel appearing for the petitioners has amended the Petition by incorporating para nos.6A to 6I and prayers clause in the Writ Petition.

3] Learned counsel appearing for the petitioners submits that, petitioner nos.2 to 5 are appointed after following proper procedure laid down under Section 5 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 [for short 'Act of 1977']. Petitioner no.1 submitted an application through Headmaster of the School and sought permission of respondent no.4 to fill up the vacant posts by issuing public advertisement. However, there was no response / reply from the office

of the Education Officer, and therefore, in order to avoid further delay in appointments of teachers so as to avoid loss to the students due to the non-availability of the teachers, petitioner no. 1 issued advertisement and after inviting applications and proper selection, petitioner nos.2 to 5 have been appointed. It is submitted that, petitioner nos.3 to 5 are appointed from VJ-A and D category. The appointment of petitioner nos. 3 to 5 from the aforesaid reserved categories is made pursuant to the direction by the State Government to clear backlog of the appointments of the candidates from the reserved category.

4] Learned counsel appearing for the petitioners invites our attention to the Government Resolution dated 16th October, 2012, issued by the Social Justice and Special Assistance Department, Government of

Maharashtra. It is submitted that respondent nos.3 and 4 have refused to grant approval on the ground that in view of the Government Resolution dated 16th October, 2012, the State Government has directed to absorb surplus teachers on vacant post. It is submitted that the said Government Resolution is not applicable in the facts of the present case inasmuch as, pursuant to the directions issued by the State Government, petitioner nos.3 to 5 who belongs to VJ-A and D have been appointed under special drive. Learned counsel appearing for the petitioners submits that said drive was pursuant to the Government Resolution dated 13th April, 2011 issued by the General Administration Department, Government of Maharashtra. It is further submitted that on 13th April, 2016 one Vijay Karbhari Ghuge surplus teacher was sent in the school run by petitioner no.1. Accordingly, petitioner no.1 allowed him to

join as Assistant Teacher on 07.07.2016. Thereafter, respondent no.4 did not send surplus teacher/teachers for absorption before or after appointment of petitioner nos.2 to 5. It is submitted that in the similar facts situation the High Court in Writ Petition 10580/2016 [Sou.Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & others] and other companion Writ Petitions held that ban on new recruitment on the posts of teachers by Government Resolution dated 2nd May, 2012 [in the present case similar Government Resolution dated 16th October, 2012] is not applicable to the appointments of the petitioners therein, who are from reserved category. Accordingly, the impugned decision taken by the Education Officer, refusing to grant approval to the appointments of petitioners therein in the said Writ Petition was quashed and set aside. Learned counsel invites our attention to the

order passed by this Court in the aforesaid Writ Petition, which is placed on record at Exhibit-Q of the compilation of the Writ Petition. Therefore, learned counsel appearing for the petitioners prays that the petition may be allowed.

5] Pursuant to the notices issued to the respondents, respondent nos.3 and 4 have filed affidavit-in-reply. It is stated in the said affidavit-in-reply that the office of respondent no.3 has taken decision on the proposal of approval of petitioner nos.2 to 5 on 18.11.2017, thereby the said proposal has been rejected. Relying upon the Government Resolution dated 16th October, 2012, it is mentioned that no approval shall be granted to new appointment unless surplus employees are absorbed. It is further stated that, as per the roster there is vacant post of Assistant Teacher for the reserved category i.e. S.T., and the post of cook is also

reserved for S.T. category in petitioner no.1 school. It is further stated that the appointment of person, namely, Vijay Karbhari Ghuge is made on 07.08.2012. His appointment is not made as per the prescribed procedure. At the time of appointment, no any permission was taken and no roster was maintained.

6] Petitioner no.1 has filed an undertaking wherein it is stated that if there is any backlog of the reserved category candidates, the same will be filled up from the reserved category candidates as per the roster duly verified by the competent authority.

7] We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, and learned AGP appearing for the respondent-State. The question involved in this petition is no longer res-integra. As rightly submitted by

the learned counsel appearing for the petitioners that the Division Bench of the Bombay High Court Bench at Aurangabad *in the case of Ashok s/o. Nilkanth Dhale Vs. State of Maharashtra and others*¹ wherein the Government Resolution dated 2nd May, 2012, issued by the School Education Department, Government of Maharashtra, provide for not to make fresh appointment unless surplus teachers are absorbed, set aside the impugned order, thereby allowed the Petition by recording the findings, which reads thus:

9. We have given careful consideration to the submissions advanced by the learned Counsel appearing for the petitioner, learned AGP for respondent Nos.1 and 2 State, the learned Counsel appearing for respondent No.3 and the learned Counsel appearing for respondent Nos.4 and 5. With their able assistance, perused the pleadings in the petition and

1 2016 [5] Mh.L.J.742

annexures thereof. Clauses 1 and 2 of the Government Resolution dated 13-4-2011 issued by the General Administration Department, Government of Maharashtra, reads thus:

“1) गट-अ व गट-ब संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची विशेष मोहीम सुरू करण्यात यावी.

2) गट-क व गट-ड संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची पदभरतीची प्रक्रिया सुरू करण्याकरिता वित्त विभागाच्या दिनांक 29-11-2010 च्या शासन निर्णयाच्या आधीन राहून विशेष मोहीम करण्यात यावी.”

Thereafter, by issuing another Government Resolution dated 21-8-2013, time to appoint the candidates from the reserved category, so as to fill in the backlog, has been extended till 31-3-2013.

10. In the present case, the petitioner is appointed as Teacher on 21-8-2013. There is no contest on the part of the respondents to the statement made in the petition that the petitioner belongs to NT-C category. Admittedly, the posts of

Teachers are reserved for the said category.

11. In the impugned communication, the Education Officer placed reliance on the Government Resolution dated 2-5-2012 issued by the School Education Department, Government of Maharashtra. Prior to issuance of the said Government Resolution, the General Administration Department, Government of Maharashtra has issued Government Resolution on 13-4-2011 and as a special case, allowed the institutions to fill-up the posts reserved for the backward category and therefore, the ban imposed by the Government Resolution dated 2-5-2012 would not apply to the present case since the petitioner's appointment was from the NT-C reserved category.

12. In that view of the matter, the impugned communication dated 22-2-2016 issued by respondent No.3 – The Education Officer (Primary), Zilla Parishad, Latur is quashed and

set aside. Respondent No.3 is directed to consider the proposal for appointment of the petitioner as Teacher afresh without raising the same reasons which are mentioned in the impugned communication, as expeditiously as possible, however within a period of four weeks from today, and communicate the decision to respondent Nos.4 and 5.

8] In the present case, the Government Resolution dated 16th October, 2012 provides for the similar provision like Government Resolution dated 02.05.2012, thereby imposing ban for new recruitment, unless surplus teachers are absorbed, would not apply to the appointment of respondent nos.3 to 5, which was made from reserved category, and after following due process of law. In the present case, admittedly, petitioner nos.2 to 5 are appointed prior to the issuance of the Government Resolution dated 16th October, 2012.

9] Petitioner no.1 has filed undertaking that in case there exists backlog from the reserved category, petitioner no.1 on priority basis will fill up those vacancies from the candidates belong to reserved categories.

10] In the light of discussion in the foregoing paragraphs, we quash and set aside the impugned order dated 18.11.2017 issued by respondent no.3. We direct respondent nos.3 and 4 to re-consider the proposal of petitioner nos.2 to 5 for approval to their posts, without raising grounds which are stated in the impugned order. Such decision is to be taken as expeditiously as possible, however, within four weeks from the date of receipt of the order passed by this Court.

11] We make it clear that unless appointments from the reserved category are made as per the roster and backlog indicated

by the respondent authorities, petitioner no.1 shall not appoint the candidates from other than reserved category.

12] Rule is made absolute in above terms. Writ Petition stands disposed of accordingly.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC