

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12201 OF 2018

Sanjay s/o Umaji Kamble,
Age-34 years, Occu:Service as
Assistant Teacher,
R/o-Labour Colony, Nanded,
Tq. & Dist-Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The Education Officer (Primary),
Zilla Parishad, Nanded,
- 3) Mahatma Phule Shikshan Prasarak
Mandal, Nanded, Tq. & Dist-Nanded,
Through its President,
- 4) Panchsheel Primary School,
Labour Colony, Nanded,
Tq. & Dist-Nanded,
Through its Head Master.

...RESPONDENTS

...

Mr.P.G. Rodge Advocate for Petitioner.
Mr.A.R. Kale, A.G.P. for Respondent No.1.
Respondent No.2 served.
Mr.V.G. Kodale Advocate for Respondent Nos.3 & 4

...

**CORAM: S.S. SHINDE AND
SUNIL K. KOTWAL, JJ.**

DATE : 13TH DECEMBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

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

2. This Petition under Article 226 of the Constitution of India, has been filed with following substantive prayer:

“B. By a writ of certiorari or any other appropriate writ or direction in the like nature, the order dated 16.08.2018 issued by the respondent no.2 Education Officer at Exhibit 'J' may kindly be quashed and set aside and the respondent no.2 may kindly be directed to grant approval to the appointment of the petitioner as Shikshan Sevak w.e.f.

16.06.2014 to 15.06.2017 in the respondent no.4-school and further to grant permanent approval to the services of the petitioner as Assistant Teacher in regular pay-scale from 16.06.2017 onwards and accordingly, release the arrears of salary of the petitioner."

3. Learned counsel appearing for the Petitioner submits that Respondent Nos.3 and 4 issued advertisement in Daily Mahasagar dated 28th May, 2014, for filling up the clear vacant and sanctioned post of Shikshan Sevak, reserved for Scheduled Caste Category. In response to the said advertisement, the Petitioner attended the interview on 7th June, 2014, along with other candidates, and after following due procedure, he came to be appointed as Shikshan Sevak vide appointment order dated 10th June, 2014, on probation for three years w.e.f. 16th June, 2014 to 15th June, 2017. It is submitted that since the date of appointment, the Petitioner is in

continuous service of Respondent No.4 school. The said appointment of the Petitioner is on clear vacant and sanctioned post of Shikshan Sevak reserved for Scheduled Caste Category and the name of the Petitioner also came to be included in the seniority list of teaching staff of Respondent No.4 school from the year 2014-15.

4. Learned counsel further submits that, in the meanwhile, the Petitioner satisfactorily completed probation period of three years services as Shikshan Sevak on 15th June, 2017, and therefore the school committee of Respondent No.4 school passed resolution on 27th June, 2017 to that effect, and further resolved to forward proposal for getting permanent approval to the services of the Petitioner from 16th June, 2017, as Assistant Teacher in regular pay-scale. However, Respondent No.4 belatedly submitted the proposal dated 9th April, 2018, to Respondent No.2 for getting

approval to the appointment of the Petitioner. It is submitted that, Respondent No.2, by order dated 16th August, 2018, rejected the proposal on the count that there is no prior permission for issuing advertisement. It is submitted that in the impugned order, reference of Government Resolutions dated 6th February, 2012 and 2nd May, 2012, is given. Thus, only on the count that the appointment of the Petitioner is made after 2nd May, 2012, Respondent No.2 refused to grant approval to the appointment of the Petitioner.

5. Learned counsel submits that since the appointment of the Petitioner has been made on the clear vacant and sanctioned post of Shikshan Sevak which is reserved for Scheduled Caste Category, the ban imposed by Government Resolution dated 2nd May, 2012 is not applicable nor the provisions of Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation

Act, 1977 (for short "M.E.P.S. Act) are attracted in respect of appointment of the Petitioner. Learned counsel submits that Education Officer, relying upon the Government Resolution dated 2nd May, 2012, refused to grant approval to the appointment of the Petitioner, on the ground that there was ban on recruitment of teachers in private aided schools till 100% absorption of surplus teachers is done. Learned counsel placed reliance upon the Judgment of the Division Bench (CORAM: SHANTANU S. KEMKAR AND PRAKASH D. NAIK, JJ.) of Bombay High Court at Principal Seat in Writ Petition No.10580 of 2015 and other connected matters (Sou. Revati Kusha Wagh and another vs. the State of Maharashtra and another), wherein it is held that, the ban imposed by the Government Resolution dated 2nd May, 2012, would not apply to the appointments which were made from reserved category after following due procedure of law.

6. Learned counsel submitted that impugned order issued by Respondent No.2 is arbitrary, capricious and the same has resulted into grave miscarriage of justice to the Petitioner. Learned counsel therefore prayed that the Writ Petition deserves to be allowed.

7. On the other hand, learned A.G.P. appearing for the State submits that, as the appointment of the Petitioner was not made after following the procedure contemplated under the provisions of M.E.P.S. Act, the Education Officer has rightly rejected to grant approval to the appointment of the Petitioner. We have also heard learned counsel appearing for Respondent Nos.3 and 4.

8. We have carefully considered the submissions of the learned counsel appearing for the Petitioner, learned A.G.P. appearing for the

State and learned counsel appearing for Respondent Nos.3 and 4. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto.

9. It appears that proposal for grant of approval to the appointment of the Petitioner has been rejected, relying upon various Government Resolutions as referred in the impugned order dated 16th August, 2018. In this respect, it would be useful to refer the observations in the case of Ashok s/o Nilkanth Dhale vs. State of Maharashtra and others¹, wherein in Para Nos.9 to 13, it is held that:

“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

1 2016(5) Mh.L.J. 742

appearing for respondent Nos. 4 and 5. With their able assistance, perused the pleadings in the petition and 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 सुरु करण्यात यावी.

2) गट - क व गट - ड संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची पदभरतीची प्रक्रिया सुरु करण्याकरिता वित्त विभागाच्या दिनांक २९-११-२०१० 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.

13. The Writ Petition stands allowed in the above terms. Rule is made absolute accordingly. No costs."

9. In the present case, the appointment of Petitioner is on the post reserved for Scheduled Caste Category. The Division Bench of this Court at Principal Seat, Mumbai (CORAM: B.R. GAVAI AND RIYAZ I. CHAGLA, JJ.) in Writ Petition No.8587 of 2016 with connected Writ Petitions (Smt. Munoli Rajashri Karabasappa vs. State of Maharashtra Shikshan Prasarak Mandal Ghodnadi, Dist-Pune vs. State of Maharashtra and another) vide order dated 10th July, 2017, in Para-9 has held thus:

"9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents- Education Officers are directed to examine independent

cases and grant approval to each of the teachers who fall in the following three categories:-

(a) Where the recruitment process is already commenced prior to GR dated 2nd May, 2012;

(b) where the appointments made for filling up vacancies in English, Mathematics and Science;

(c) where the recruitment is made to fulfill the backlog of reserve categories candidates."

11. As already observed, admittedly, appointment of the Petitioner is on the post reserved for Scheduled Caste category. Further, the documents placed on record reveals that before issuing appointment to the Petitioner, the Respondent management has published an advertisement in Daily Mahasagar Samachar on 28th

May, 2014. Thereafter, after following due procedure as contemplated under Section 5 of the M.E.P.S. Act, the Petitioner came to be appointed as Shikshan Sevak. It appears that before passing impugned order, Respondent No.2 - Education Officer, has not taken into consideration all these facts and rejected the proposal seeking grant of approval to the appointment of the Petitioner. Thus, we are of the considered view that the impugned order dated 16th August, 2018, passed by Respondent No.2, thereby rejecting to grant approval to the appointment of the Petitioner, deserves to be quashed and set aside.

12. For the reasons above stated, we pass following order:

O R D E R

I) Impugned order dated 16th
August, 2018, passed by Respondent

No.2, thereby rejecting to grant approval to the appointment of the Petitioner, is quashed and set aside.

II) Respondent No.2 – Education Officer is directed to examine the case of the Petitioner in the light of observations made herein above, and after verifying from the record that appointment of the Petitioner is in clear vacant post, reserved for Scheduled Caste Category, take necessary steps to grant approval to the appointment of the Petitioner as Shikshan Sevak from his date of appointment, and pay salary and wages to him, to which he is entitled to.

III) Rule is made absolute in
above terms. Writ Petition stands
disposed of, accordingly.

[SUNIL K. KOTWAL, J.]

asb/DEC18

[S.S. SHINDE, J.]