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

WRIT PETITION NO.13005 OF 2017

1. Chandrajit s/o Gokulrao Bhamre,
Age: 37 years, Occ: Service,
R/o. Malpur, Tq. Sakri,
Dist. Dhule.
 2. Rajendra s/o Hashiram Jagtap,
Age: 29 years, Occ: Service,
R/o. Pimpalner, Tq. Sakri,
Dist. Dhule.
 3. Ajim s/o Sadik Shah,
Age: 27 years, Occ: Service,
R/o. Mhasadi, Tq. Sakri,
Dist. Dhule.
 4. Tushar s/o Dilip Birhade,
Age: 31 years, Occ: Service,
R/o. Forest Office Quarters,
Lenin Chowk, Near Phasipool,
Dhule, Tq. & Dist. Dhule.
 5. Vishwas s/o Sudam Gavit,
Age: 32 years, Occ: Service,
R/o. Raipur, Tq. Navapur,
Dist. Nandurbar.
 6. Mahendra s/o Dajbhau Sonawane,
Age: 30 years, Occ: Service,
R/o. Shirdhane (Prener),
Tq. & Dist. Dhule.
 7. Smt. Kundal Ramdas Ahire,
Age: 34 years, Occ: Service,
R/o. At present Plot No.34,
Naina Society, Sakri,
Tq. Sakri, Dist. Dhule.
- ..PETITIONERS

VERSUS

(2)

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Nashik Division, Nashik.
3. The Education Officer (Secondary)
Zilla Parishad, Dhule.
4. Vidyavikas Mandal Sakri,
Tq. Sakri, Dist. Dhule
Through its Secretary
5. Adarsha Madhyamik Vidyalaya Sakri,
Tq. Sakri, Dist. Dhule
Through its Headmaster.
6. Katwan Madhyamik Vidyalaya
Chhail Pratappur, Tq. Sakri,
Dist. Dhule
Through its Headmaster.
7. Vasantao Dada Patil
Madhyamik Vidyalaya Kasare,
Tq. Sakri, Dist. Dhule
Through its Headmaster.
8. Jijamata Kanya Vidyalaya Sakri,
Tq. Sakri, Dist. Dhule
Through its Headmaster. ..RESPONDENTS

Mr V.S. Panpatte, Advocate for petitioners;
Mr S.M. Ganachari, A.G.P. for respondent/State.
Mr V.D. Sapkal, Advocate for respondent Nos. 4 to 8

**CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.**

DATE : 3rd OCTOBER, 2018

ORAL ORDER :

Heard Mr Panpatte, learned Counsel appearing on behalf of the petitioners.

2. Mr Panpatte, learned Counsel appearing on behalf of the petitioners submitted that all these petitioners are the candidates belonging to reserved category and were appointed in the year 2012 for teaching various subjects like English, Hindi, Science, Geography by following due procedure of law. Mr Panpatte, learned Counsel while vehemently criticizing on the order impugned in the petition, thereby rejecting the approval to the appointment of these petitioners, submitted that the rejection order is unsustainable on more than one grounds. He submitted that it is not in dispute that the management submitted its proposal for approval immediately after the appointment of the petitioners i.e. approval was submitted on 28th September, 2012 and reference is made in the rejection order as the first reference. He further

(4)

submits that firstly, the Education Officer was sitting idle on the proposal for a considerable long period of five years and then on unsustainable grounds, the proposal is rejected.

3. Mr Panpatte, learned Counsel, by inviting our attention to the various documents placed on record submitted that the management institute was having a good number of posts vacant from the reserved category candidates and roster was also approved by the competent authority, copy of the same is placed on record at Exh.'B'. He further submitted that as the posts are vacant and there was immediate need of filling of the posts, not only in the interest of institute but in the interest of students, the management submitted proposal to the Education Officer for filling up the posts. The proposal was submitted to the Education Officer on 5th June, 2012 and on the very day the proposal was received by the Education Officer. He then submitted that at the time of filing of the petition, documents were not

(5)

available with the petitioners but subsequently, the petitioners received the documents and the petitioners can lay their hands in support of their submissions on the said documents. The copies of the said documents are taken on record and marked 'X' for identification.

4. Mr Panpatte, learned Counsel then submitted that in a daily newspaper, namely, 'Punya Nagari', which is having a vide circulation in Dhule district, an advertisement was published, copy of the said advertisement dated 28th July, 2012 is also placed on record showing required posts which were to be filled in. Perusal of the advertisement shows that there were as many as seven posts to be filled in, in Secondary School and for Junior College, there was one vacancy available. Petitioner No.1 Chandrajit Bhamre, who was requisite qualification of M.A. B.Ed. and was from reserved category i.e. O.B.C. was appointed to teach English subject in Adarsha Madhyamik Vidyalaya on 6th August, 2012. Petitioner No.2

(6)

Rajendra Jagtap having requisite qualification of M.A. B.Ed. and candidate belonging to S.T.category was appointed on 6th August, 2012 to teach Hindi subject in Adarsha Madhyamik Vidyalaya i.e. respondent No.5. Petitioner No.3 Ajim Shah possessing qualification of H.S.C. D.Ed., from category of V.J.N.T. was appointed on 6th August, 2012 to teach all subjects in Adarsha Madhyamik Vidyalaya. Similarly, petitioner No.4 Tushar Birhade possessing educational qualification as M.Sc. B.Ed., candidate from S.C. category was also appointed on 6th August, 2012 to teach Science subject. Petitioner No.5 Vishwas Gavit having qualification of B.A. B.Ed. Belonging to S.T. category was appointed to teach English subject. Petitioner No.6 Mahendra Sonawane having qualification of M.A. B.Ed., from O.B.C. category was appointed on 6th August, 2012 to teach Geography subject and petitioner No.7 Smt. Kundal Ahire having qualification of H.S.C. D.Ed. from O.B.C. category was appointed on 1st September, 2012 to teach all subjects in Jijamata Kanya

Vidyalaya.

5. Mr. Panpatte, learned Counsel appearing for the petitioners then submitted that institute also passed resolution giving approval to the appointment of these petitioners in the meeting dated 2nd August, 2012 and copy of the proceeding book is also placed on record. He then submitted that when the institute management submitted its request to the Education Officer on 5th June, 2012 no objection was raised by the Education Officer and in the rejection order, a ground is raised that the management failed to follow the provisions of the Act more particularly Maharashtra Employees Private Schools Rules 1981 and Rule 98. It is stated that the institute failed to issue advertisement in a largely circulated daily newspaper.

6. Mr. Panpatte, learned Counsel appearing for the petitioners submitted that on the backdrop of record placed before this Court namely roster,

(8)

approval by the competent authority, advertisement issued in the newspaper, objection and grounds raised by the Education Officer are clearly unsustainable. He then submitted that other ground raised in the order namely No.2,3 and 4 are also unsustainable. He then submitted that in the order impugned in the petition, Education Officer thrusting burden on the management stating that the management failed to verify whether there are surplus teachers and reasons are assigned that the management without seeking necessary approval and without satisfying Education Officer about the aspect of availability of surplus teachers appointed the petitioners.

7. Mr. Panpatte, learned Counsel appearing for the petitioners submitted that prior to appointment of petitioners, there was no communication forwarded from the Education Officer informing the management about availability of surplus teachers. He then submitted that whenever such occasion arises, the management absorbed

(9)

excess teachers and this exercise was undertaken by the management. He then invited our attention to the documents placed on record at Exhibit-F to show that management received information of availability of surplus teachers and immediately management absorbed surplus teachers namely Namdeo Bagul and Sambhaji Bhadane. Copies of joining report of Bhadane and Bagul are also placed on record wherein these persons admit that they were absorbed in the school run by the management institute. Thus, it was submission of Mr. Panpatte, learned Counsel that whenever such occasion arose for absorption of the surplus teachers, the management followed the directions of the Education Officer and as at the time of appointing these petitioners, there was no such communication received by the management, the management appointed the petitioners.

8. Mr. Panpatte, learned Counsel then submitted that ground No.5 is in respect of ban for non teaching employee as per Government Resolutions

(10)

dated 10th June, 2010, 15th July, 2011 and 12th February, 2015. He then submitted that in the ground raised, it is specifically stated that these resolutions were in respect of a ban for non teaching employees. In spite of this, the Education Office raised a ground and stated that the appointment of the petitioners cannot be approved.

7. The submission of Mr. Panpatte, learned Counsel appearing for the petitioners is, this ground is raised by the Education Officer only to show non application of mind. He then submitted that other reasons assigned in the order are also reiteration of the earlier ground that failure of the management to absorb the surplus employees. He then submitted that an identical issue was raised before the Principal Seat wherein ground of opposition was, appointment was made in the band period or the petitioners were appointed though there were surplus teachers available.

(11)

8. Learned Counsel appearing for the petitioners placed heavy reliance on the judgment and order passed by the Division Bench at Principal Seat in Writ Petition No.2024 of 2017. He submitted that the issue was dealt in detail by the Division Bench at Principal Seat in Writ Petition No.8587 of 2016 on 10th July, 2017. In Writ Petition No. 2024 of 2017 the Division Bench of this Court again reiterated the observations in Writ Petition No.8587 of 2016. He also invited our attention to the order passed in Writ Petition No.3945 of 2017 to which both of us were party and in our order, we also referred to the orders passed at Principal Seat in Writ Petition No.8587 of 2016 and Writ Petition No.2024 of 2017. Learned Counsel thus, prays for allowing the petition by quashing and setting aside the order impugned in the petition.

9. Learned A.G.P. opposed the petition relying on the affidavit filed on behalf of the Deputy Education Officer, Zilla Parishad, Dhule.

(12)

Perusal of the affidavit in reply clearly shows that in the affidavit in reply, grounds raised for opposing the petition are altogether different and these grounds are not referred to in the order impugned. Interestingly, in the affidavit in reply, it is stated that the advertisement was not published as per Rule 98 of the M.E.P.S. Rules, 1981 and it is stated that respondent No. 3 failed to take permission to publish advertisement.

10. Now, these grounds are not certainly raised in the rejection order. As the respondent authority is trying to supplement these grounds by way of affidavit in reply, such a course is not approved under the various judicial pronouncement. In the affidavit in reply, it is also stated that one of the petitioners is not belonging to category mentioned in the advertisement. Now, there is nothing in the affidavit in reply that from which source the Deputy Education Officer could come to know about this factual aspect and even if it is so, this is not ground in the rejection order.

11. Thus, considering all these aspects, we are of the opinion that the petitioners have made out a case and the order impugned in the petition is clearly unsustainable. Resultantly, the petition is allowed in terms of prayer clause (B) and (C).

12. We further direct respondent No.3 Education Officer (Secondary), Zilla Parishad, Dhule to grant approval and pass necessary orders for regular pay scale to the petitioners and necessary orders for other benefits to which the petitioners are entitled to namely salary etc., as expeditiously as possible and not later than six weeks from the date of order of this Court.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

Tupe

S.U.
Tupe

Digitally signed
by S.U. Tupe
Date:
2018.10.06
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