

(1)

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

WRIT PETITION NO.14802 OF 2017

Gajanan S/o Motiram Shimpale,
Age : 38 years, Occup. Service as
Shikshan Sevak in Janata High School
& Junior College, Naigaon (Bazar),
R/o Naigaon (Bazar),
Tq. Naigaon (Khai.), Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32
2. The Deputy Director of Education,
Latur Division, Latur
3. The Education Society,
Naigaon (Bazar), Tq. Naigaon (Khai.),
Dist. Nanded,
Through its Secretary
4. Janata High School & Junior College,
Naigaon (Bazar), Tq. Naigaon (Khai.),
Dist. Nanded,
Through its Principal/Headmaster

..RESPONDENTS

Mr V.S. Panpatte, Advocate for petitioner;
Mr S.S. Dande, A.G.P. for respondents no.1 & 2;
Mr I.D. Maniyar, Advocate for respondents no.3 & 4

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

DATE : 23rd October, 2018

ORAL ORDER:

(2)

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

2. The petitioner is before this Court challenging the order dated 22nd September, 2016, whereby the proposal for grant of approval to the petitioner's appointment as Assistant Teacher is rejected. Mr Panpatte vehemently submitted that for rejection of approval there are as many as three reasons assigned and none of these reasons is sustainable in case of the petitioner. Mr Panpatte, by inviting our attention to the documents placed on record submitted that the education institute running the high school, namely, Janata High School and Junior college, Naigaon, Taluka Naigaon, District Nanded issued an advertisement calling upon the candidates for the interview scheduled on 10th December, 2014. The petitioner who is having requisite qualifications attended the interview scheduled on 10th December, 2014. Our attention was invited by Mr Panpatte to the copy of the advertisement placed on record. Perusal of the advertisement clearly shows that it was for teaching Marathi subject, one post was shown as a vacant post and this post was available for the candidates from open category. The petitioner was appointed from 15th December, 2014. The order of appointment is also placed on record. Mr Panpatte then submitted that the grounds, namely, the petitioner was appointed without verifying that there is backlog in existence and this ground is again reiterated in the affidavit in reply. By inviting our attention to paragraph 6 of the affidavit in reply Mr

(3)

Panpatte submitted that, it is stated in the affidavit in reply that proposal was submitted on 19th June, 2015. Subsequently the management has submitted roster on 9th June, 2016 wherein backlog is there and there exists backlog for 4 SC, 2 ST, 2 NT, 2 NTC and 2 SBC posts. There is no post vacant for open category post and thus the appointment of the petitioner is not valid. It is the submission of Mr Panpatte that these statements in the affidavit in reply are completely in contrast to the factual position and the record placed before this Court. He submitted that prior to verification of the roster dated 9th June, 2016, the petitioner was appointed in the year 2015, in response to an advertisement issued in the year 2014. Then Mr Panpatte, by inviting our attention to the affidavit in reply on behalf of the management submitted that even for these 12 posts available to the reserved category candidates, an advertisement was issued and the advertisement clearly states that this is for filling up the posts from reserved category in the institute on their unaided divisions. This advertisement was published on 5th September, 2017. Then the learned Counsel submitted that the roster was verified on 9th June, 2016 and subsequent to the verification of the roster, the Education Department granted permission to fill up these 12 posts by communication dated 21st August, 2017 and even these posts are filled in. Thus, it is reiterated by Mr Panpatte that all this exercise is undertaken after two years from appointment of the petitioner. Then Mr Panpatte submitted that the petitioner was appointed by giving an advertisement. Mr Panpatte then submitted that by communication dated 27th November, 2015, the Deputy

(4)

Director of Education, Latur Division informed that the exercise of absorption of surplus teachers is also completed. As such the appointment of the petitioner was fully satisfying the requisite compliance under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and more particularly compliance of Section 5 thereof.

3. Mr Panpatte further submitted that not only this but the State Government, considering this fact situation, issued various Circulars and by way of a policy decision reflected in the Circular dated 13th March, 2018, the State Government issued directions to grant approval to the teachers who were appointed after 2nd May, 2012 without obtaining no objection certificate from the Education Department. A copy of the circular dated 13th March, 2018 is placed on record for ready reference by Mr Panpatte. The same is marked "X" for identification. Mr Panpatte has also placed on record communication dated 10th August, 2018 in support of his submissions. The same is taken on record and marked "X-1" for identification. Mr Panpatte also invited our attention to certain orders of this Court to submit that in identical circumstances, the Division Bench of this Court allowed the petition. It may not be necessary for us to refer to all these orders.

4. Though the learned Asstt. Govt. Pleader opposes the petition placing reliance on the affidavit in reply. On perusal of the material placed on

(5)

record, we find considerable merit in the submissions of Mr Panpatte. Mr Panpatte made out a case in the petition. Resultantly, the petition is allowed in terms of prayer clause (B) and disposed of accordingly.

(MANISH PITALE, J.)**(PRASANNA B. VARALE, J.)**

amj