

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15005 OF 2017

Shirur Shikshan Prasarak Mandal
Through its Secretary and others

.. **Petitioners**

Versus

The State of Maharashtra and another

.. **Respondents**

Shri Vivek Vasantryao Bhavthankar, Advocate for the Petitioners.
Shri A. A. Jagatkar, A.G.P. for Respondents.

CORAM : **S. V. GANGAPURWALA &**
SUNIL K. KOTWAL, JJ.

DATE : **18th June, 2018**

PER COURT :

1. Mr. Bhavthankar, learned counsel submits that petitioner no. 2 was appointed on 26.02.2010 as a Junior Clerk. The proposal seeking approval to the appointment of the petitioner is rejected on the ground that there is a backlog of S.T. category candidate and also that as per Government Resolution dated 12.2.2015 and 18.5.2015 there is ban on recruitment of non teaching staff. The same is erroneous.

2. Learned Assistant Government Pleader submits that without filling in the backlog of S.T. post the institution could not have appointed the petitioner from O.B.C. category. Even the Government Resolution dated 12.2.2015 and 18.5.2015 bans recruitment of persons in non teaching posts. The provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 are not followed.

3. The petitioner is appointed in the year – 2010. In view of that, Government Resolution dated 12.2.2015 and 18.5.2015 would not apply. The position existing as in the year – 2010 will have to be considered. It is not disputed by the respondent that there were two posts available one for S.T. category and another for O.B.C. category. It is also not disputed that the petitioner is appointed from O.B.C. category on the post meant for O.B.C.

4. The order of the Education Officer would have been justified had the post not being available for O.B.C. category.

But the facts are otherwise. The post is available for O.B.C. category as per the roster. The Education Officer could have insisted upon the institution to fill in the S.T. category post also, but that could not have been ground to reject the approval of the petitioner.

5. In the light of above, the impugned orders are quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the appointment of the petitioner afresh. The Education Officer may consider the roster, the advertisement issued and all other relevant aspects of the matter, however shall not reject it on the ground on which the impugned orders are passed. The proposal shall be considered expeditiously and preferably within six (6) months.

6. Writ Petition accordingly stands disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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