

(1)

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

WRIT PETITION NO.15179 OF 2017

Ganpat s/o Madhukar Pathak,
Age: 41 years, Occ:Service,
R/o. Kotul, Tq. Akole,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through: The Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education (Secondary)
Central Building, Pune Division,
Pune-1.
3. The Deputy Director of Education,
Pune Division, Near Red Temple,
Pune-1.
4. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar.
5. The President/Secretary,
Bahujan Prabodhan Shikshan Sanstha,
Kotul, Tq. Akole, Dist.Ahmednagar.
6. The Head Master,
Dr. Babasaheb Ambedkar Vidyalaya,
Kotul, Tq. Akole,
District Ahmednagar.

..RESPONDENTS

WITH

(2)

WRIT PETITION NO.15265 OF 2017

Ravindra s/o Dattatraya Salunke,
Age: 41 years, Occ: Service,
R/o. Kotul, Tq. Akole,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through: The Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education (Secondary)
Central Building, Pune Division,
Pune-1.
3. The Deputy Director of Education,
Pune Division, Near Red Temple,
Pune-1.
4. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar.
5. The President/Secretary,
Bahujan Prabodhan Shikshan Sanstha,
Kotul, Tq. Akole, Dist.Ahmednagar.
6. The Head Master,
Dr. Babasaheb Ambedkar Vidyalaya,
Kotul, Tq. Akole,
District Ahmednagar.

..RESPONDENTS

WITH

WRIT PETITION NO.15278 OF 2017

Pankaj s/o Tanaji Patil,
Age: 40 years, Occ: Service,
R/o. Kotul, Tq. Akole,
Dist. Ahmednagar.

..PETITIONER

(3)

VERSUS

1. The State of Maharashtra,
Through: The Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education (Secondary)
Central Building, Pune Division,
Pune-1.
3. The Deputy Director of Education,
Pune Division, Near Red Temple,
Pune-1.
4. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar.
5. The President/Secretary,
Bahujan Prabodhan Shikshan Sanstha,
Kotul, Tq. Akole, Dist.Ahmednagar.
6. The Head Master,
Dr. Babasaheb Ambedkar Vidyalaya,
Kotul, Tq. Akole,
District Ahmednagar. ..RESPONDENTS

Mr M.V. Dhongade, Advocate for petitioner;
Mr S.Y. Mahajan, A.G.P. for respondent Nos.1 to 4;
Mr S.S.Kulkarni, Advocate for respondent Nos. 5
& 6

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL,JJ.**

DATE : 6th DECEMBER, 2018

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ORAL ORDER :

This is second round of approach to this Court by these petitioners. The petitioners consist of teaching and non teaching employees appointed by respondent No.5 in respondent No.6 – school. It was submitted before this Court in the earlier round of litigation that these petitioners were appointed and their appointment was by following due procedure and after their appointment, proposals were submitted to the authority for grant of approval. These proposals were complete in all respects but the authority kept proposals pending without there being any decision on the proposals.

2. It was submitted before this Court by the State that there are certain material discrepancies in the proposals and as the discrepancies were not removed, no decision was taken on the said proposals. Considering the submissions and counter submissions, the Division Bench of this Court directed the Education Officer to decide the proposal submitted by the Management and/or

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institution seeking approval to the appointment of the petitioners expeditiously and preferably within six months from the date of order on its own merits.

3. In view of the order of this Court, a fresh proposal was submitted through respondent No.6 – head master to the Education Officer dated 9th May, 2017. On receiving the proposal, Education Officer (Secondary), by communication dated 20th July, 2017 informed respondent No.6 head master that there are certain deficiencies in the proposal, as many as nine deficiencies in the form of objections were raised along with petitions filed by these petitioners. The Education Officer directed respondent No.6 head master to submit report along with removal of deficiencies. The Secretary of the institute promptly responded communication on 1st August, 2017 and copy of the same is placed on record at Exhibit-S. The Secretary, in the report dated 1st August, 2017 provided detail explanation on the

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queries/objections raised by the Education Officer.

4. It is submitted that earlier head master Smt. Chaya Ramesh Bansode left service, as such, post was falling vacant and in place of Smt. Bansode, one Shri. Kalusing Tembrya Walvi was promoted by order dated 28th July, 2009 and his post then was falling vacant and then by publishing an advertisement, Mr. Ganpat Madhukar Pathak was appointed. Then there is explanation to other queries namely about permission for advertisement. The query in respect of not appointing reserved category candidate is also replied submitting that the institution is a minority institution. Then there is also explanation in respect of minority certificate granted to the institute. A specific explanation is provided to a query that there was no renewal of the minority certificate and the explanation submitted to which was, minority certificate was granted by National Minority Commission on 23rd May, 2018 and there is no provision of renewal of certificate. Thus, this

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was detailed report submitted to the Education Officer in response to the communication dated 20th July, 2017.

5. Learned Counsel appearing for the petitioners submitted that in spite of this explanation report, in the order impugned dated 25th September, 2017, the Education Officer (Secondary) states that there are still queries unanswered and posted further with rejection of the proposal, assigning grounds which are not grounds in the communication dated 20th July, 2017. Learned Counsel submitted that the order of this Court was specific and management/institute was permitted to submit fresh proposal and the Education Officer was directed to decide the fresh proposal. Learned Counsel thus, submitted that the order impugned in the present petitions only show that the Education Officer traveled beyond the scope of the order of this Court and to the reasons assigned in the order, there was no opportunity either to the petitioners or to the institutes to respond these grounds.

6. On perusal of the material referred to above and on perusal of the order of this Court, we find considerable merit in the submission of learned Counsel for the petitioners. It was expected of the Education Officer either to concentrate on the deficiencies pointed out by him to the proposal submitted by the institute and then to pass order on that aspect or if the Education Officer was of the opinion that there are some other grounds on which the proposal is incomplete or the explanation is required, the Education Officer ought to have given an opportunity of hearing to the petitioners or institution. The order dated 25th September, 2017 is clearly in breach of natural justice. The grounds assigned in the order are not made known the parties who have been affected by the order. With this ground alone, the order impugned in the petitions is unsustainable.

7. Considering these aspects, we are of the

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opinion that the course open for us is, to quash and set aside the order dated 25th September, 2017 impugned in the petitions and then directing the Education Officer to pass the order afresh. This exercise be undertaken by the Education Officer i.e. respondent No. 4 as expeditiously as possible and not later than eight weeks from the date of this order.

8. With these observations and directions, the petitions are disposed of.

(MANGESH S. PATIL)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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