

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1318 OF 2017

Shri Shashikant Ankush Galande

And Others

... Petitioners

Versus

The State of Maharashtra

Through the Secretary

School Education Department

And Another

... Respondents

.....

Mr. N.V. Bandiwadekar a/w Mr. Vinayak Kumbhar for the Petitioners.

Ms. Vaishali Nimbalkar, AGP for the Respondents.

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CORAM : S.C. GUPTE, J.

DATE : 28 JUNE 2018

(JUDGMENT) :

. Heard learned Counsel for the Petitioners and learned AGP for the State.

2 Rule.

3 Rule taken up for hearing forthwith by consent of Counsel.

4 The subject matter of the present petition is an order passed by Education Officer (Secondary), Zilla Parishad, Solapur, on 2 January 2017, declining to approve the appointment of Petitioner No.1 as Shikshan Sevak in the school run by Petitioner Nos.2 and 3.

5 Plaintiff No.1 was appointed as a Shikshan Sevak in the Secondary School run by Petitioner Nos.2 and 3, which is a Government recognized and aided private secondary school. Petitioner No.1 belongs to Open category. Being B.A., B.Ed by qualification, he has been duly qualified to be appointed as Shikshan Sevak/Assistant Teacher in a secondary school. As per the roster, verified as on 24 April 2011, there were four vacancies of teaching posts in the open category in the two schools of Petitioner No.2 management (including Petitioner No.3). After duly initiating selection procedure for filling up the vacancies, Petitioner No.1 was selected and recommended for appointment. Before initiating the selection process, Petitioner No.2 had communicated to the Education Officer (Secondary), Zilla Parishad, Solapur about availability of the vacancies and need to fill up the posts. There was no response from the Education Officer. Even a renewed request for permission to fill up the posts elicited no response. There was no communication from the Education Officer whatsoever in that behalf. The management, accordingly, proceeded to issue an advertisement inviting applications *inter alia* for one post of open category in Petitioner No.3-school. The appointment was to be made as a Shikshan Sevak for the subjects of Marathi and Geography. Having the requisite qualifications of B.A. (Marathi and Geography) and B.Ed., Petitioner No.1 fulfilled the qualifications and applied for the post and was duly selected. On the management's application for approval, approval to the appointment of Petitioner No.1 was declined by the Education Officer purportedly on the ground that the appointment was without following Government Resolution

dated 2 May 2012. The resolution of 2 May 2012 *inter alia* directs school managements of aided schools that unless surplus teachers are fully (i.e.100 per cent) absorbed, no new teachers should be appointed in private schools or schools of local self Governments. The Education Officer observed that the appointment of Petitioner No.1 was made despite this ban, when there were surplus teachers for academic year 2012.

6 The companion petitions, namely, Writ Petition No.1312 of 2017 and others, which also involve a similar point, namely, non-fulfillment of the Government Resolution of 2 May 2012, were heard by this Court along with the present writ petition. By a detailed order dated 27 June 2018 passed in those matters, this Court repelled the Respondents-State's stand concerning non-compliance with the Government Resolution dated 2 May 2015. Learned AGP on behalf of the State relied upon Section 5(1) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act") and submitted that under the proviso to Section 5(1), school managements were duty-bound to ascertain from the Education Officer of the Zilla Parishad the availability of suitable persons for absorption from the list of surplus teachers maintained by him before proceeding to fill up the vacancies. This Court repelled the State's contention, observing *inter alia* that the managements in those cases had communicated the vacancies to the Education Officer and sought the latter's permission to fill up the same. That was not just once but by two separate communications with a gap of about two months. This

Court held that the Education Officer was expected to forward the names of suitable persons from the list of surplus teachers maintained by him in response to these communications and if no surplus teachers were available for absorption, give a go-ahead to the managements to appoint teachers through regular appointment procedure. No such response was communicated by the Education Officer in those cases. This Court held that the school managements were not expected to carry on with the vacancies, waiting indefinitely for the response of the Education Officer, and the school managements were, in the premises, within their rights to proceed to fill up the vacancies.

7 Even in the present case, there was a communication by the school management to the Education Officer not just once, but on two consecutive occasions with a gap of about two months. None of these communications elicited any response from the Education Officer. In the premises, for the same reasons as are discussed in the case of **Ms. Pallavi Shashikant Dhotre Vs. The State of Maharashtra**¹, even in this case, the State's contention regarding non-compliance with Government Resolution of 2 May 2012 in the light of Section 5(1) of MEPS Act, has no merit. The State cannot deny approval to the appointment of Petitioner No.1 on this basis. Petitioner No.1 has been appointed in the year 2012 and has been working in Respondent No.3-school for all these years and considering that there is no other legitimate reason assigned for denying approval to his appointment,

1 Writ Petition No.1312 of 2017 and Others, decided on 27 June 2018

the order deserves to be set aside. The Education Officer ought to consider the proposal afresh and grant his approval, if there are no other reasons (i.e. other than non-compliance with G.R. of 2 May 2012).

8 In the premises, the petition is disposed of in terms of the following order :-

: O R D E R :

i) Rule is made absolute and the writ petition is allowed by quashing and setting aside the impugned order dated 2 January 2017 ;

ii) The Education Officer shall consider the proposal of Petitioner Nos. 2 and 3 for approval to the appointment of Petitioner No.1 as Shikshan Sevak in Petitioner No.3-school on its own merits and in accordance with law. It is made clear that approval cannot be denied by reason of the alleged ban on recruitment under Government Resolution dated 2 May 2012 ;

iii) The Education Officer shall consider the case of Petitioner No.1 within a period of four weeks from the date this order is uploaded on the High Court website and grant approval, if Petitioner No.1 is otherwise eligible for the same.

(S.C. GUPTE, J.)