

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

REVIEW PETN. IN WP NO. 48 OF 2018
IN
WRIT PETITION 11252 OF 2016

The Education Officer (secondary)Petitioner

V/S

Mrs Sadhana Satappa Patil & ors.Respondents

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Mr.S.M.Kankal,AGP for Reivew Petitioner- original Respondent No 2.
Mr.N.V.Bandiwadekar a/w Sagar Ashok Mane for (Original Petitioner in WP No.11252/2016) Respondent No.1.
Mr.Chetan Gajanan Patil for Respondents Nos.3 & 4.
Mr.Kiran Anant Lohar, Education Officer (Secondary) Zilla Parishad, Kolhapur is present in Court.

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CORAM : A.A. SAYED,J

DATED : 16 JULY 2018

(In chamber at 2.40 p.m.)

P.C.:

The Review Petition impugns the order dated 9 December 2016 passed by me allowing Writ Petition No.11252 of 2016 filed by the Respondent No.1. The only ground canvassed before me is that at the relevant time there was a ban on recruitment to the post of teachers under the Government Resolution dated 2 May 2012.

2. I have perused the order dated 16 June 2016 of the Education Officer (Secondary), Zilla Parishad, Kolhapur, which was challenged in Writ Petition No.11252 of 2016. The said order reads as follows:

“No.KZP/2016/29
Education Department (Secondary)
Z.P., Kolhapur,
Dated: 16/6/2016

To,
The Headmaster,
Bhogawati High School, Shahunagar (Parite),
Tal. Karvir, Dist.Kolhapur

Sub: Regarding individual approval.
Sou.Sadhana Satappa Patil,
Shikshan Sevak

Ref: Your proposal dated 16-6-2016

With reference to above, the proposal has been received at the Camp for individual approval to the appointment of sou.Sadhana Satappa Patil as Shikshan Sevak in your School. Upon verification of the proposal, it is seen that Sou.Sadhana Patil has been appointed in the backlog of 3 posts of Open Category, as certified.

However, from perusal of the Roster dated 20-3-2013 annexed to the proposal, it is seen that there is backlog of reservation of ST-2, VJ(A)-2, NT(B)-1, NT(D)-1, OBC-1 and SBC-1. Therefore, approval cannot be granted to the appointment of

Sou.Sadhana Satappa Patil made in Open Category. Hence, the proposal is rejected.

Sd/-

Education Officer (Secondary)
Zilla Parishad, Kolhapur”

(emphasis supplied)

3. Learned Counsel for the Respondent-Original Petitioner has relied upon the judgment of the Constitution Bench of the Supreme Court in the case of **Mohinder Singh Gill and another v/s. The Chief Election Commissioner, New Delhi**, AIR 1978 SC 851 and in particular paragraph 8 thereof, which reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to

effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:
A Caveat."

(emphasis supplied)

4. It is seen that the only reason mentioned for rejection of approval of the Respondent No.1-original Petitioner in the order dated 16 June 2016 which was impugned in the Writ Petition was that there was a backlog of reservation of ST-2, VJ(A)-2, NT(B)-1, NT(D)-1, OBC-1 and SBC-1. However, in the Affidavit in Reply of the Education Officer (Secondary), fresh reasons are stated, which did not find place in the order dated 16 June 2016. In the circumstances, considering the principle of law laid down in the aforesaid judgment of the Constitution Bench of the Supreme Court, I do not find any error apparent on the face of the record to review the order dated 9 December 2016, even if the concession made by the learned AGP, as recorded in paragraph 6 of the impugned order, were to be disregarded. The Review Petition shall accordingly stand dismissed.

5. I am informed that the Respondent-Original Petitioner is working with the Respondent No.4-School since 16 August 2012, however, she has not been paid any salary for the last about 6 years. In these circumstances, it is expected of the Education officer (Secondary) to pay the salary and arrears thereof to the Respondent No.1-original Petitioner, at the earliest and in any event within 6 weeks from today.

Uday
Prabhakar
Kambli

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by Uday
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(A.A.SAYED, J.)