IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12021 OF 2017

1 Shri. Prakash Govind Tibe

2 Prince Shivaji Maratha Boarding House, Kolhapur .... Petitioners

Vs.

1 The State of Maharashtra

2 The Education Officer (Secondary) Zilla Parishad, Kolhapur .... Respondents

Mr. N.V. Bandiwadekar a/w Mr. Sagar Mane I/by Ms. Ashwini Bandiwadekar for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondents.

Ms. Charushila Chaudhari, Deputy Secretary, School Education Department, Maharashtra.

Coram : SMT. SADHANA S. JADHAV, J.
Date : 5th October 2018.

P.C.:

1 Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioner being aggrieved by the order dated 26th August 2015 passed by the Education Officer (Secondary), Zilla Parishad, Kolhapur has approached this Court by filing the present writ petition. The petitioner no.2 i.e. Prince Shivaji Maratha Boarding House, Kolhapur is an educational institution, registered under the Bombay Public Trusts Act. The Petitioner no.2 runs "Maharashtra High School & Junior College at Kolhapur.

3 The petitioner no.1 belongs to reserved category i.e. Hindu Dhangar caste, which falls into N.T. category. The petitioner no.1 was appointed as a Junior Clerk in the school of Petitioner no. 2 vide order dated 1st July 1999. The Education Officer had granted approval to the said post and the salary was released by the Education Officer. A combined seniority list of non-teaching employees consisting the cadres of Junior Clerks, Librarians and Laboratory Assistants etc. was prepared. The petitioner no.1 happens to be senior most Junior Clerk and was appointed w.e.f. 1st December 2014 as senior most teacher. A proposal was submitted

for approval of the said promotion. The Education Officer had granted approval to the promotion of petitioner no.1 as a Senior Clerk w.e.f. 1st December 2014 in the Pay-scale of Rs.5,200/- to 20,000/-, GP 2400/- and hence he was working as Senior Clerk. On 1st January 2015, he was promoted as Head Clerk in the said School. A proposal was submitted for approval of the said post on 5th February 2015. The post was approved. The approval was granted to the promotion of Tukaram Shripati Patil and upon his retirement, the petitioner no.1 being the senior most was promoted to the said post. On 7th April 2015, a proposal was sent for approval of the post of petitioner no.1 and the same was refused by an order dated 26th August 2015. In fact it was an approved post. Shri. Patil, who was working on the said post had received approval and the petitioner was promoted to the said post.

4 It is true that the promotion to the post cannot be treated as filling-in the vacancy and therefore the G.R. dated 12th February 2015 would not be applicable to the post of the present petitioner. Hence, the impugned order dated 26th August 2015 passed by the

Education Officer (Secondary), Zilla Parishad, Kolhapur deserves to be quashed and set aside.

5 The petition is allowed in terms of prayer clause (b). Rule is made absolute in above terms.

(SMT. SADHANA S. JADHAV, J.)