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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3723 OF 2017

Kedar Bhalchandra Raut & anr. .. Petitioners

Vs.

The State of Maharashtra & anr. .. Respondents

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Shri N.V. Bandiwadekar, Advocate for the Petitioner.

Mrs. Rupali M. Shinde, AGP for State.

Shri Mohan Shashikant Desale, Education Officer (Sec.),
Palghar.

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**CORAM : R.M. SAVANT, &
M.S. KARNIK, JJ.**

DATE : 27th SEPTEMBER , 2018

P.C. :

The challenge in this Petition filed under Article 226 of the Constitution of India is to the order dated 11/11/2016 issued by the Respondent No.2 – The Education Officer (Secondary), Zilla Parishad Palghar, District – Palghar, refusing to grant approval to the appointment of the Petitioner No.1 as Lab Assistant with effect from 1/8/2009, who is working in the School of Petitioner No. 2 – Institution.

2. The facts of the case in a nutshell are thus :-

The Petitioner No.1 belongs to the Other Backward Class (OBC). The Petitioner No.2 – Educational Institution runs two Government recognized and fully aided Schools viz. (1) Pam Kumbhawali Vibhag High School at Pam, Taluka Palghar, District Palghar (Std. V to X) and (2) Delawadi Vibhag High School at Delawadi, Taluka Palghar, District Palghar (Std. V to X). The Petitioner No.1 appointed one Shri Sameer Madhukar Pimpale in the sanctioned post of Lab Assistant by an order dated 15/5/2008. The Respondent No.2 granted approval to the said appointment on probation period of 36 months. Shri Pimpale tendered his resignation on 31/7/2009. Thus one post of Lab Assistant fell vacant from 1/8/2009.

3. The Petitioner No.2 issued an advertisement on 16/7/2009 in local newspaper inviting applications for the post of Lab Assistant. Out of the four candidates who were present and interviewed, the Selection Committee selected and recommended the Petitioner No.1 for appointment as Lab

Assistant. The Petitioner No.1 came to be appointed as Lab Assistant from 1/8/2009 to 31/7/2012 on an honorarium of Rs.2500/- per month.

4. The Head Master of the School submitted a proposal by a letter dated 21/1/2010 to grant approval to the said appointment. By an order dated 8/2/2010 approval was not granted due to non furnishing of adequate details of the selection process. Thereafter, the School submitted the requisite information.

5. The Education Officer however raised various queries on the said proposal. By a letter dated 21/12/2012, the Respondent No.2 queried about the backlog of the reservation in the School. The Head Master of the School informed that in the Schools there are four non teaching posts i.e. Junior Clerk, Librarian and Lab Assistant. As per rules, two posts are for reserved category and two are meant for Open Category. It was informed that two candidates from NT category and one from

OBC category are working. The approval has been granted to these three candidates. Since there is deficit in the Open Category, the Petitioner No.1 should be treated in the Open Category. Ultimately, by the impugned order dated 11/11/2016 the Respondent No.2 refused to grant approval to the appointment of the Petitioner No.1. The refusal was on the ground that appointment made on 1/8/2009 was without following the prescribed procedure.

6. Learned Counsel for the Petitioner No.1 assailing the impugned order submits that it was pursuant to the advertisement issued in accordance with the rules that the Petitioner No.1 came to be selected and appointed. He further submits that out of four sanctioned posts in the non teaching cadre, three are already filled up by the reserved category candidates, for which the Respondent No.2 has already granted approval. One post was occupied by the candidate of the Open Category. Learned Counsel of the Petitioner No.1 submitted that insistence on the part of the Respondent No.2 to fill up the post

by a reserved category candidate would amount to 100% reservation which is impermissible.

7. Per contra, an Affidavit-in-Reply has been filed by the Respondent No.2 only on the ground that upon verification of the roster on 19/3/2012 it is revealed that there are four sanctioned posts and out of the four posts there is backlog of one SC category post and one ST category post available. The Management appointed the Petitioner No.1 in the OBC category which is against the backlog as per the roster. The Learned AGP reiterated the case of the Respondent No.2 as stated in the Affidavit.

8. In our opinion, the stand taken by the Respondent No.2 is completely misconceived and untenable. It is a matter of record and not disputed that there are four sanctioned posts of non teaching staff. It is further a matter of record that of the four posts, two candidates of the NT category and one candidate of the OBC category are appointed. The Respondent No.2 has granted approval to these three appointments.

9. Insofar as the fourth post is concerned, one Shri Pimpale was appointed as Open category candidate. Upon resignation of Shri Pimpale the post fell vacant which post the Petitioner No.1 duly advertised for appointment. Pursuant to the advertisement issued, the Petitioner No.1 was selected in the Open category. He was considered along with other candidates and duly appointed. Merely because he belongs to the OBC category would not preclude him to compete with other candidates for the Open category.

10. The resultant position therefore is that there are already three reserved category candidates working whose appointments are duly approved by the Respondent No.2. Insistence on the part of the Respondent No.2 to fill up the said post by SC/ST candidate would virtually amount to 100% reservation. The Respondent No.2 himself has granted approval to the appointment of other three candidates of the reserved category. In any case, Shri Pimpale who belongs to the Open category was working in the fourth post which fell vacant as a

result of his resignation.

11. In this view of the matter, if the Petitioner No.2 proceeded to appoint the Petitioner No.1 after due selection as an Open category candidate in the post which was earlier occupied by an Open category candidate, we find nothing wrong in the appointment. Insistence on the part of the Respondent No.2 to fill the backlog is completely arbitrary and irrational as in that eventuality all the posts would be occupied by the reserved category candidates. The impugned order is therefore quashed and set aside.

12. The Writ Petition is accordingly allowed in terms of prayer Clauses (b) and (c) with no order as to costs.

[M.S. KARNIK, J]

[R.M. SAVANT, J]