

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO. 83/2017

Shri Anup Ambadas Charpe

..VS..

State of Maharashtra & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S.Kilor, Advocate for the petitioner
Shri A.S. Fulzele, Addl. GP for the respondent nos. 1 to 3
Shri A.S. Dhore, Advocate for the respondent nos. 4 and 5

CORAM : B.P. DHARMADHIKARI AND
Z.A.HAQ, JJ.

DATED : 06/06/2018

1] The petitioner has been recruited after due permission and advertisement. He completed three years of service as Shikshan Sevak and as the completion is satisfactory, he has been made an Assistant Teacher. This appointment as Assistant Teacher has also been approved by Education Officer.

2] By impugned order dated 01/07/2017, respondent no. 2/Deputy Director of Education has withdrawn that approval.

3] Effort of learned advocate for the petitioner is to urge that the petitioner has been recruited at Sr. No. 33 and one post out of remaining four vacant posts i.e. roster point nos. 34 to 37 is found to be reserved for Scheduled Tribe by Deputy Director.

4] Learned Addl. GP is relying upon reply affidavit. He submits that the sanctioned strength of teachers was only 35 and the management of petitioner erroneously reflected the same to be 37. Hence there was wrong application of mind by Additional Commissioner (Backward Cell) which has resulted in wrong application of roster.

5] Respondent nos. 4 and 5 have filed their reply. They submit that post at Sr. No. 18 had become vacant and that roster point is for open category.

6] The defence of respondent no. 2 itself shows total non-application of mind. If alleged unsanctioned posts were shown while obtaining roster approval, how it affects roster application has not been demonstrated. The management has come up with express case that post at Sr. No. 18 became vacant and as per the judgment of Hon'ble Apex Court, it has been filled in through very same category. We need not comment on this. The respondent no. 2 does not come up with a defence that if two posts are reduced and sanctioned strength is brought down to 35, the post on which the petitioner is recruited falls on roster point which is reserved for any backward class. On the contrary, the respondent no. 2 accepts that even in that case, the post remains open.

7] We therefore find the impugned order unsustainable. Having given approval to the advertisement and thereafter to the appointment, such orders throw an incumbent out of employment after he has put in three or four years of service. This therefore is a very harsh exercise. If respondent no. 2 found respondent no. 3/Education Officer at fault, Respondent no. 2 who ought to have taken action

against the Education Officer and directed recovery from said Education Officer. That has not been done however in the present facts, we find that the impugned order passed by respondent no. 2 itself unsustainable. We accordingly quash and set aside the same. We restore approval given to appointment of the petitioner.

8] PIL is accordingly allowed. Respondent no. 2 shall personally pay costs of Rs. 2,000/- (Rs. Two Thousand only) to the petitioner.

JUDGE

JUDGE

Ansari