

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5861 OF 2018

Sunanda Sundar Suryawanshi .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Santosh S. Jadhavar, Advocate for the Petitioner.
Shri S. B. Pulkundwar, A.G.P. for Respondent Nos. 1 and 2.
Shri P. S. Chavan, Advocate for Respondent Nos. 3 and 4.
Shri V. V. Kabade, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.
DATE : 22ND APRIL, 2019.**

FINAL ORDER :

. Proposal seeking approval to the appointment of the petitioner is rejected.

2. The petitioner herein is appointed on 16.07.2008. The services of the petitioner were terminated probably on the ground that approval to the appointment was not granted. The petitioner filed an appeal before the School Tribunal. The School Tribunal allowed the appeal filed by the petitioner and set aside order of termination dated 02.01.2013 and directed reinstatement of the petitioner, so also directed payment of

salary as against the management. It appears that, the petitioner was allowed to join the service. The proposal was also forwarded seeking approval to the appointment of the petitioner. Same is rejected on the ground that there was no post available for the petitioner. No prior permission was obtained while appointing the petitioner.

3. According to Mr. Jadhavar, the learned counsel for the petitioner, the petitioner was appointed on 16.07.2008. At that time the reservation was 34%. Reliance is placed on Rule 9(9) of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Rules. The learned counsel submits that, the roster as on the date the petitioner was appointed is required to be considered. The respondent No. 5 is appointed in place of the petitioner after the petitioner was terminated from service.

4. The learned counsel for the respondent No. 5 submits that, the respondent No. 5 is appointed on clear vacant post. The respondent No. 4 belongs to Scheduled Tribe category and the post was available for the S. T. at the time the respondent No. 5 is appointed.

5. Mr. Chavan, the learned advocate for respondent Nos. 3 and 4 submits that, it is because the petitioner was terminated from service, the respondent No. 5 was appointed and respondent

No. 5 is working since February 2013.

6. Present anomalous situation has arisen on account of the petitioner being terminated from service and subsequently appeal being allowed and during the interregnum respondent No. 5 is appointed. It is submitted that, there are four sanctioned posts with the respondent/institution. At the time the petitioner was appointed on 16.07.2008, the reservation was 34%. The reservation as is applicable on the date the petitioner was appointed will have to be considered. The petitioner is from open category.

7. The respondents shall consider the case of the petitioner for grant of approval to his appointment considering the reservation as 34% as on the date the petitioner was appointed and if the post was available for open category candidate as on 16.07.2008 considering 34% reservation available then, the approval shall be granted to the service of the petitioner.

8. In case the approval is granted to the service of the petitioner, the question would arise about the service of the respondent No. 5. The respondent No. 5 is working with the institution for almost six years. The services of the respondent No. 5 also has to be protected to adjust the equities. In case approval is granted to the appointment of the petitioner, then the

respondent authority may declare the respondent No. 5 as surplus and absorb the respondent No. 5 in any other institute.

9. In case the Education Officer does not find appointment of the petitioner as per roster, no further question would arise with regard to the respondent No. 5. The Education Officer shall take decision upon the proposal for approval to the appointment of the petitioner afresh, expeditiously and preferably within a period of four (04) months from today. The writ petition is disposed of. No costs.

[A. M. DHAVALÉ, J.]

[S. V. GANGAPURWALA, J.]

bsb / April 19