

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

WRIT PETITION NO.1864 OF 2017

Radhika D/o Ramdayal Thombre,
Age-24 years, Occu:Service,
R/o-Prayag Niwas, Shivneri Nagar,
Parbhani, Tq. & Dist-Parbhani.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Education Department,
Mantralaya, Mumbai,
- 2) The Education Officer (Primary),
Zilla Parishad, Parbhani,
Tq. & Dist-Parbhani,
- 3) The Head Master,
Bhartiya Bal Vidya Mandir,
Primary School, Mamta Nagar,
Parbhani, Tq. & Dist-Parbhani.

...RESPONDENTS

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Mr.Tukaram M. Venjane Advocate for Petitioner.
Mr.P.N. Kutti, A.G.P. for Respondent No.1.
Mr.B.A. Shinde Advocate for Respondent No.2.
None present for Respondent No.3 though served.

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**CORAM: SUNIL P. DESHMUKH AND
B.U. DEBADWAR, JJ.**

DATE : 10TH DECEMBER, 2019

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Petitioner is seeking writ of certiorari or directions in the nature of certiorari against order dated 21.01.2017, passed by respondent No.2 - Education Officer (Primary), Zilla Parishad, Parbhani, communicating refusal of approval to appointment of present petitioner. Under impugned order, it has has been referred to that since 14 teachers and 73 other category employees are to be accommodated and having regard to order in Writ Petition No.9076 of 2016 and proviso under section 5 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,1977 until all surplus teachers are accommodated, decision upon proposal submitted on 09-10-2015 would not be taken referring to decision by Nagpur Bench in Writ Petitions No.6606 of 2015, 6607 of 2015 with companion writ petitions and Writ Petition No. 156 of 2016.

3. The documents placed on record shows that

management of respondent No. 3 school had published advertisement in news-paper on 03-12-2014 and thereupon by following due procedure, *inter alia*, constituting selection committee, appointment order in favour of the petitioner had been issued on 31-12-2014 and accordingly it appears that proposal for grant of approval to her appointment had been moved on 09-10-2015. As there was no response from education officer for almost one year, petitioner was constrained to file writ petition No. 12579 of 2016 and this court by order dated 16-01-2017 directed respondent No. 2 – education officer to consider and decide proposal for approval to appointment of petitioner within six weeks. Thereafter without hearing to petitioner, under impugned order negation to the request has been communicated.

4. Learned Counsel Mr. Venjane appearing for petitioner submits that compliance on the part of management is easily discernible from the events and no action had been taken on the request by respondent No.2. Communicating refusal after about 15 months that too on over-stretching technicalities is not proper. He places reliance on decision by Division Bench of this

Court in Writ Petition No.3708 of 2017. Referring to said decision, he submits that relevant factual aspects in said matter and present situation are quite close. Neither advertisement nor appointment of the petitioner has been disputed. Only reason for negation is ban put under resolution in May, 2012 and availability of surplus teachers. In such case, negation ought to have been immediately communicated. Respondent No.2 had sat tight over the proposal, which is not proper and not in consonance with principles of natural justice. Petitioner had never been called upon by respondent No.2. He submits that similar directions be given in the present matters as have been given in paragraph 8 of above said decision in Writ Petition No.3708 of 2017, which reads thus :-

" 8. Considering the above, the impugned order is quashed and set aside. The respondent-Education Officer shall consider the proposal seeking approval to the appointment of petitioners afresh and shall not reject it on the ground on which the impugned order is passed. The Education Officer is directed to consider all other aspects of the matter. The said proposal shall be decided expeditiously preferably within four months. "

5. On the other hand learned counsel Mr. Shinde,

appearing for respondent No.2 stiffly resist the request and he submits that as referred to under the impugned order at relevant time 14 surplus teachers and about 73 other employees were to be accommodated. Over and above, the Government had issued ban on appointment of private school employees by passing resolution in May, 2012. He submits that ban imposed by the Government shows that unless and until there is 100% absorption of surplus teachers, there would not be fresh appointment in private schools. The ban still continues. He further contends, it cannot be said that advertisement had been given in news-paper which was widely circulated in the area. He, thus, contends that the procedure had been only ostensibly followed. He, therefore, supports impugned order.

6. Having regard to aforesaid and taking over all view, it would be seen that for almost about 15 months, after the proposal was submitted, no response whatsoever had been given by respondent No.2. It is not case of respondent No.2 that no such request had ever been received at his office. It is also not denied that there had been advertisement issued on 03-12-2014. It also does not appear that while making

appointment, due procedure had not been followed. It is also not denied that proposal for approval to the appointment of petitioner had been submitted on 09-10-2015. At no point of time during the period from the date of issuance of advertisement for appointment to the date of passing impugned order, respondent school had even been communicated about availability of surplus employees for accommodation. Negative communication has been issued rather too late. In these circumstances, it would be pertinent to refer to observations of Division Bench in its decision in Writ Petition No.3708 of 2017 in paragraphs No.6 and 7 reading thus :-

“ 6. Almost after about a year, after the last candidate was appointed, surplus candidate was referred, no reason is forthcoming from the Education Officer for not forwarding the surplus candidates for absorption in the respondent-Institution though large number of vacancies were available. It was a lethargy on the part of the Education Officer in not sending the surplus candidates immediately though Education Officer had the knowledge of the vacancies with the respondent-Institution thereby frustrating the scheme of absorption of surplus candidates.

7. The petitioners No.4 to 8 are appointed from reserved

category. The ban on recruitment has been relaxed for them. The petitioners No.1 to 3 are from open category. The applications seeking permission to fill in the posts were given to the respondents. The respondents did not respond for more than one year. The posts could not have been kept vacant for such a long period. ”

7. It has been referred to that petitioner belongs to open category. In the circumstances, we deem it appropriate to dispose of present writ petition by adopting the observations as have been made by the Division Bench in paragraph No.8 while deciding writ petition No.3708 of 2017, reproduced here-in-before.

8. For the reasons afore-stated impugned order dated 21-01-2017 passed by respondent No. 2 is set aside. Proposal seeking approval to the appointment of petitioner is restored to its position for decision afresh and shall not be rejected on the grounds on which impugned order is passed.

9. The institution as well may make application with regard to sanction to the post to appropriate authority and if such application is made or has already been made, concerned

authority shall consider the same on merits as expeditiously as possible, preferably within a period of six months. We hope that appropriate decision would be taken objectively.

10. Rule made absolute accordingly. The petition stands disposed of.

(B.U. DEBADWAR, J.)
asb/DEC19

[SUNIL P. DESHMUKH, J.]