

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

WRIT PETITION NO. 2517 OF 2017

Raju s/o Shriram Haridas,
Age-32 years, occu:Service,
R/o-Pangaon, Tq-Renapur,
Dist-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Social Welfare and Special
Assistance Department,
Mantralaya, Mumbai-32,
- 2) The Director,
Directorate of VJNT, OBC &
SBC Welfare, State of Maharashtra,
3, Church Road, Pune,
- 3) The Divisional Deputy Commissioner,
Social Welfare, Aurangabad, Division,
Aurangabad,
- 4) Special District Social Welfare Officer,
Beed, Dist-Beed,
- 5) Marathwada Ustod Kamgar
Vikas Mandal, Parali Vaijnath,
Tq-Parali Vaijnath, Dist-Beed,
Through its Secretary.

...RESPONDENTS

...
Mr.V.D. Gunale Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondent Nos.1 to 4.
Mr. R.R. Bangar Advocate for Respondent No.5.
...

**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 26TH SEPTEMBER, 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. A few undisputed facts will have to be referred to that pursuant to advertisement in newspaper dated 23rd May, 2012 inviting applications for the post of assistant teacher from Other Backward Classes (OBC) category, under regular selection process, petitioner had been selected and appointed as petitioner belongs to 'Yellam' a OBC category person possessing requisite qualification for appointment as Assistant Teacher according to Maharashtra Employees of Private Schools (Conditions of service) Regulation Act and Rules. Petitioner joined services accordingly in June, 2012. Management had submitted proposal for approval to appointment of the petitioner and approval had

been granted for the academic year 2012-2013. Petitioner continued in service after 2012-2013 and on completion of requisite period of service as required under law, had become a permanent employee. As a matter of fact, in seniority list prepared by the management, petitioner's name had figured at serial No.3 for the academic year 2012-2013. However, the management thereafter had reluctant to send proposal for approval to employment of the petitioner.

3. Petitioner in the circumstances had approached the concerned authorities and there had been a communication by the director of VJNT, OBC and Special Backward Class Welfare, State of Maharashtra, instructing that 13 persons working in the *ashram* school run by the management be considered for appropriate approval. Thereupon, it appears that the divisional deputy commissioner, social welfare department, Aurangabad has purportedly rejected the approval to petitioner's appointment for the reason that writ petition No.5680 of 2016, at the instance of one Mr. Karad, has been pending before this court.

4. Mr. Gunale, learned counsel appearing for the

petitioner, during the course of his submissions proposed to clarify the position that matter of Mr. Karad would have no implication and would not impinge upon concerned approval to be granted to the petitioner. Petitioner's appointment is on clear vacant, sanctioned post reserved for OBC category. The advertisement has been issued for appointment of assistant teacher from OBC category, whereas Mr. Karad, even if it is to be considered, would obviously not a candidate from OBC category. In such a case, refusal under the impugned communication to grant permanent approval to the petitioner's appointment is not at all justifiable. There is not even a remote concern of Mr. Karad to the post where petitioner is appointed. He, therefore, urges to allow the petition quashing and setting aside the impugned communication.

5. Learned AGP Mr. Dande submits that while petitioner had been appointed on temporary basis for the academic year 2012-2013, as per clause 7 and 10 in the order dated 23rd March, 2016 issued by the director of VJNT, OBC and Special Backward Class Welfare, State of Maharashtra, while Mr. Karad was transferred from primary school to secondary school and as

approval was granted to his services for the year 2010-2011 and 2011-2012, he would be naturally senior to petitioner and since Mr. Karad has filed writ petition and same is pending, the impugned communication has been issued declining approval to the services of the petitioner.

6. From aforesaid, position emerges that there is no dispute about that petitioner has been working on clear vacant, sanctioned post reserved for OBC category. Respondents authorities have not been able to show that petitioner had been occupying the same post which Mr. Karad is working on. It has not been shown as to how issue of seniority would affect petitioner who has been appointed on reserved post being an OBC person. Mr. Karad is not shown to be from said category. In such a case, it is clear that approval to petitioner's appointment could not have been detained for pendency of writ petition by Mr. Karad. We, therefore, set aside the action purporting to refuse approval to petitioner's post. While the petitioner claims that he has been appointed on clear vacant and sanctioned post reserved for OBC category upon which there are no other claims, the proposal for approval to the appointment of

the petitioner will have to be considered accordingly.

7. In view of the same, the impugned communication dated 6th February, 2017 issued by respondent No.3 to the extent of petitioner stands set aside, reviving the proposal for processing afresh by concerned authorities. The concerned authorities shall decide on the proposal as early as possible, preferably within a period of two months from the date of receipt of copy of this order. Needless to refer that if approval is granted, necessary consequences shall follow. Rule is accordingly made absolute. Writ petition stands disposed of.

(S.M. GAVHANE, J.)

asb/SEP19

[SUNIL P. DESHMUKH, J.]