

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

WRIT PETITION NO.4192OF 2017

Samadhan s/o Chandrakant Jadhav,
Age : 25 years, Occu.: Service as a
Junior Clerk in Lal Bahadur Shashtri
Secondary School, Sawargaon,
Tq. Bhoom, District Osmanabad

..... PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Higher and Technical Education,
Department, Mantralaya,
Mumbai - 400 032.
- 2) The Education Officer (Secondary)
Zilla Parishad, Osmanabad.
District Osmanabad.
- 3) The President
Jai Bhawani Samajik Bahu Uddeshiya,
Shikshan Prasarak Mandal,
Sawargaon (Devangra), Tq. Bhoom,
District Osmanabad.
- 4) The Head Master,
Lal Bahadur Shashtri Secondary School,
Sawargaon, Tq. Bhoom, Dist. Osmanabad,
Run by Jai Bhawani Samajik Bahu Uddeshiya,
Shikshan Prasarak Mandal, Sawargaon
(Devangra) Tq. Bhooj, District Osmanabad

... RESPONDENTS

Mr. D.R. Adhav, Advocate for the petitioner
Mr. P.N. Kutti, AGP for the respondent/State
Mr. V.P. Savant, Advocate for respondent Nos. 3 and 4.

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE,JJ.
DATED : 26.06.2019**

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel
for the appearing parties finally by consent.

2. There is no particular dispute on that petitioner had been appointed as Junior Clerk on a single post in the school under appointment order dated 28-07-2011. It is being contended on behalf of petitioner and the management respondents No.3 and 4 that soon thereafter proposal had been submitted to Education officer (Secondary) seeking approval to said appointment.

3. It is not disputed that before earlier incumbent was to retire, permission had been sought by the management for advertising the post. It emerges that there had been no response to said communication. The management had subsequently issued advertisement and selection process had been undertaken.

4. While the matter, it is claimed, with regard to approval to appointment of petitioner had been lingering on, once again for said purpose, the Education Officer was approached in 2015 and impugned communication had been issued, referring to that the proposal has been submitted almost four years later, no proposal was submitted during the camps in 2011-2012 and 2013-2014. There is no no-objection to appointment of petitioner and that until absorption of surplus teachers having regard to Section 5(1) of MEPS Act, it is difficult to take decision on proposal for approval to appointment of petitioner and that the appointment had been during ban imposed by the State Government and further the institution had been admonished that action pursuant to government resolution dated 12-02-2015 in respect of appointments or non teaching staff would be taken. Thus, the petitioner has

approached this court.

5. It is contended on behalf of the petitioner that ban imposed under government resolution dated 02-05-2012, is subsequent to appointment of the petitioner and that affidavit-in-reply filed on behalf of the management shows that proposals were indeed submitted immediately after his appointment and one more proposal had been submitted in 2015. By virtue of his qualification and appointment, it is his legitimate claim to have approval to the appointment of petitioner and the same is being obfuscated under impugned communication referring to the ban which is not applicable to appointment of petitioner and overlooking the communication of management. Learned counsel for management respondents No.3 and 4 supports the submissions on behalf of the petitioner.

6. Learned AGP however submits that the appointment of petitioner would not be said to be in compliance with the requirements in the MEPS Act particularly Section 5(1). He submits that proposal had been submitted after lapse of four years and had not been submitted through proper channel. Before appointment prior permission from office of respondent No.2 had not been obtained and since the government had imposed ban, it was so communicated that new recruitments are difficult to be approved. With regard to documents annexed to affidavit-in-reply on behalf of the management-respondents No.3 and 4, learned AGP submits that the factual situation will have to be verified. He submits that, since proper procedure had not been adopted and due to ban, impugned order is not liable to be faulted with.

7. Learned counsel for petitioner refers to a decision of the Division Bench of this court dated 27-04-2016 in Writ Petition No.8893 of 2015 and points out contents of paragraph No.6 therein. It appears that in the same it had been considered while petitioner therein had been appointed in 2011, the ban on new recruitment had been with effect from 02.05.2012. The petitioner had been appointed in 2011 and at the relevant time there was no ban on recruitment. The Division Bench had remitted the matter for reconsideration of the proposal for approval to appointment of the petitioner. It further appears that petitioner therein belonged to backward class category and the government had under the resolution of 2013 had campaigned a special drive to fill up the posts of backward classes.

8. Having regard to aforesaid, the relevant factual position in present matter appears to be quite close to situation in that matter with distinction of post and present petitioner is from open category.

9. There is no dispute on that petitioner had been appointed in 2011 before the ban on appointment had been issued and it is contended that there have been several attempts by management seeking approval to appointment, in the circumstances, we deem it appropriate to give similar treatment as in the decision in Writ Petition No. 8893 of 2015, to the proposal for approval to petitioner's appointment. The proposal of petitioner be reconsidered afresh having regard to that his appointment indisputably is of 2011, before issuing the ban. All points are open for the parties. In view of aforesaid impugned order is set aside for aforesaid purpose.

10. It is hoped that the proposal for approval to appointment of the petitioner would be processed as expeditiously as possible preferably within a period of three months from date of receipt of this order.

11. Rule made is absolutely accordingly. The petition is disposed of.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]