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

WRIT PETITION NO. 3747 OF 2017

Bhatesh S/o Madhukar Patil
Age: 37 years, Occu: Service,
R/o : Waktuki, Tq. Dharangaon,
Dist. Jalgaon

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Secondary),
Zilla Parishad, Dhule
3. Rural Education Society,
Fagne, Tq. and Dist. Dhule,
Through its President
4. Chhaganmal Sahebrao Bafna High School,
Fagne, Tq. and Dist. Dhule,
Through its Head Master

..RESPONDENTS

Mr V. S. Panpatte, Advocate for petitioner;
Mrs. M. A. Deshpande, A.G.P. for respondent Nos. 1 & 2;
Mr P.G. Gunale, Advocate for respondent Nos. 3 & 4

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 5th March, 2019

ORAL ORDER:

Heard Mr Panpatte, learned Counsel appearing on behalf of the petitioner, learned Asstt. Govt. Pleader for respondent Nos.1 and 2 and Mr Gunale, learned Counsel appearing on behalf of respondent Nos.3 and 4.

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2. The petitioner challenges the order dated 9th February, 2017, passed by the Education Officer, whereby the proposal for grant of approval to the appointment of the petitioner is rejected assigning as many as nine grounds. Perusal of the order impugned in the petition shows that the ground Nos.8 and 9 are the reiteration of ground No.7. The other grounds are in the nature of no prior permission sought from the education authorities for filling up the post and the institute failed to follow the other formalities, which are prerequisites seeking permission for issuance of the advertisement published in newspaper having wide circulation in the division and there is delay in submitting the proposal for approval.

3. Mr Panpatte, learned Counsel for the petitioner vehemently submitted that none of the grounds is sustainable for rejection of the proposal. He further, by inviting our attention to the document placed on record at Exh.'B', submitted that the President of the society submitted the proposal for seeking 'No Objection Certificate' to proceed with filling up the posts in the school. A communication is received by the office of the Education Officer, Zilla Parishad, Dhule on 20th February, 2004. As such, the Education Officer again raised the ground that the office of the Education Officer was not informed or permission was not sought for. Now perusal of this communication shows that the same is under caption/subject seeking 'No Objection' from the education authority and the intention of filling up

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the posts is made clear in the letter, as such, the communication states that the Education Officer made known by the institute to fill up the posts and if in case there are surplus teachers, the Education Officer may inform accordingly.

4. An advertisement was published in the newspaper, namely, 'Apla Maharashtra' on 26th June, 2012. A copy of this advertisement is placed on record at Exh.'A'. Perusal of this advertisement shows that in Sr No.5, a post is notified of 'Shikshan Sevak' along with requisite academic qualification for teaching subject Marathi and the category is shown as Scheduled Tribes S.B.C.

5. Learned Asstt. Govt. Pleader vehemently submitted before us that the rejection order refers to ground No.3 and by this ground, the Education Officer objected the exercise of the institute submitting that the institute failed to follow the reservations policy. He submitted that by this advertisement, the institute declared one post vacant of teaching Marathi subject but the category is shown as Scheduled Tribe SBC. It is the submission of learned Asstt. Govt. Pleader that the advertisement itself is defective and if it was an intention of the society to fill up the post of a candidate from the persons having a physically handicapped, the advertisement ought to have refers this fact and the missing reference makes the advertisement faulty and defective. He made this submission on perusal

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of the material placed on record. We are unable to accept the submission of learned Asstt. Govt. Pleader.

6. The affidavit-in-reply is filed on behalf of the society. It is submitted before us by way of affidavit-in-reply that as per the sanctioned staffing pattern and on this backdrop, the institute proceeded to appoint 'Shikshan Sevak' from the category of physically handicapped persons. Learned Counsel appearing for the institute submitted that there was a mistake in first advertisement dated 26th June, 2012. Finding on the error, the society immediately on the next date, approached the newspaper office with a request to publish a corrigendum. A statement to that effect is made in para 2 of the affidavit-in-reply filed in this Court on 21st June, 2018, which reads thus:

"2. after issuance of the advertisement dated 26.06.2012, on the very next date we, the respondent Nos.3 and 4 issued corrigendum in Dainik Apala Maharashtra dated 27.06.2012 thereby clarifying that the said post at Sr.No.5 in the advertisement dated 26.06.2012 shall be read as reserved for Handicap category instead of S.T. S.B.C."

7. It is also stated that initially the copy of the newspaper was not available, as such, same could not be placed before this Court on earlier affidavit-in-reply or additional affidavit-in-reply, but by way of affidavit-in-reply filed on 21st June, 2018, this fact is brought to the notice of this Court

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along with a copy of corrigendum. For the satisfaction of the Court, learned Counsel for the society management also made available the entire copy of newspaper dated 27th June, 2012. A corrigendum is published in the very newspaper i.e. 'Apla Maharashtra' at page 7 of the said newspaper and there is a specific statement in the corrigendum that it was a mistake in stating category Scheduled Tribe S.B.C. and category should be read as the category of physically handicapped persons.

8. On perusal of the above referred material, we find considerable merit in the submissions of Mr Panpatte, learned Counsel for the petitioner that in the grounds raised in the rejection order, ground No.1 is clearly unsustainable as the advertisement was published in the newspaper. A corrigendum was also effected immediately on the next date. Insofar as second ground is concerned, Mr Panpatte is also justified in submitting that if the Education Officer raises the ground of delay in submitting proposal, firstly, this may be only an irregularity and this cannot be termed as illegality and if it is treated as irregularity, for such irregularity, the proposal for approval cannot be rejected as this is not a serious irregularity but a curable irregularity and secondly, if assuming that there is a delay then for that delay certainly the petitioner is not responsible. If the management submitted proposal belatedly, for this delay the Education Officer may take some steps against institute but certainly the petitioner cannot be sufferer and the Education Officer can not turn down the proposal of the petitioner for the delay caused at the hands of the institute.

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9. Mr Panpatte is also justified in submitting that the other grounds in respect of appointment in ban period will not be applicable in the case of the petitioner and this ground of ban period is dealt in detail in the judgment delivered by the principal seat of this Court. The other aspect which cannot loose sight of is, the appointment of the petitioner is of a person from physically handicapped category. One of the interesting feature is, the Education Officer in an attempt to support the order of rejection stated in the additional affidavit-in-reply filed in this Court on 27th July, 2018 that no certificate of disability was submitted at the time of proposal. Now, this is a ground raised before this Court in the additional affidavit-in-reply and this is nothing but supplanting the reason by way of affidavit-in-reply, when this reason is not assigned in the rejection order impugned in the petition. On this ground itself, we are not inclined to take cognizance of this additional ground raised in the affidavit-in-reply.

10. Considering all these facts, we find that learned Counsel for the petitioner has made out a case for allowing the petition. Accordingly, the petition is allowed in terms of prayer clause (B) and (C).

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)