

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

WRIT PETITIION NO.6256 OF 2017

Sarika d/o. Bhagwanrao Rupnar .. Petitioner
Age.38 years, Occ.Service
as Assistant Teacher with
Renuka Secondary and Higher
Secondary School, Bhokramba,
Tq. Renapur, Dist.Latur.
R/o.Bhokramba,
Tq. Renapur, Dist. Latur.

Versus

1. The State of Maharashtra .. Respondents
Through Secretary,
School Education and Sports Department,
Mantralaya, Mumbai - 32.
2. The Education Officer (Secondary),
Zilla Parishad, Latur,
Tq. & Dist. Latur.
3. Renuka Education Society,
Bhokramba, Tq. Renapur,
Dist. Latur,
Through its President/Secretary.
4. Renuka Secondary and Higher
Secondary School, Bhokramba,
Tq. Renapur, Dist. Latur,
Through its Head Master.

Mr. V.D. Hon, Sr. Counsel i/b. Mr. H.V. Patil, Advocate for petitioner.
Mr. G.O. Wattamwar, AGP for respondent/State.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.
DATED : 22.07.2019**

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

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

2. Petitioner claims to have been appointed as NT-C category candidate possessing requisite educational qualifications (M.A. B.Ed.) for appointment to post of Assistant Teacher in respondent No.4-School run by respondent No.3 and had been appointed under order dated 10-09-2013. Management had earlier passed resolution to said effect. Proposal for approval to appointment of petitioner as *Shikshan Sevak* had been sent on 10-03-2014 to respondent No.2 along with necessary documents. Pursuant to order of this Court dated 30-01-2017 in writ petition No.1409 of 2017, it appears, petitioner had appeared before respondent No.2. It is contention of petitioner that instead of passing order on proposal, notice came to be issued, which had been initially impugned in present petition. Subsequently, during pendency of petition, order dated 27-04-2017 came to be passed refusing approval to petitioner's appointment as Assistant Teacher/*Shikshan Sevak*, referring to that appointment had been subsequent to ban on appointments pursuant to Government Resolutions dated 02-05-2012, 06-02-2012 and 20-06-2014, as surplus teachers were to be accommodated, having regard to directions in writ petitions No.9076 of 2016, 6606 of 2015, 6607 of 2015 and 156 of 2016 dated

16-06-2016 and 11-07-2016.

3. Learned sr. counsel Mr.V.D. Hon submits that reasons given under impugned order are wholly untenable, for order does not take into account subsequent developments taking place where-under rigour of resolution dated 02-05-2012 has been diluted by issuing resolutions dated 21-08-2013 and 04-09-2013. He submits that it is indisputable that petitioner had been appointed as NT-C category Assistant Teacher/*Shikshan Sevak* and that she had been appointed for English subject and that petitioner is a woman and only second woman teacher in the school. Learned sr. counsel refers to order dated 09-03-2017 passed in a group of petitions bearing No.10580 of 2015, 1145 of 2016, 10581 of 2015, 10721 of 2016 and 6219 of 2016, wherein division bench had taken into account order of another division bench in case of *Ashok Nilkanth Dhale Vs. State of Maharashtra*, 2016 (5) Mh.L.J.742 and had observed that ban imposed under Government Resolution dated 02-05-2012 would not apply to appointments made from reserved category, after following due procedure of law. In writ petition No. 8587 of 2016 and connected writ petitions, a division bench of this court under order dated 10-07-2017 has noted that Government Resolution dated 02-05-2012 imposing ban until absorption of surplus teachers has been relaxed by subsequent Government Resolution dated 04-09-2013, insofar as subjects English, Science and Maths are concerned. The division bench has further observed that if the Education

Officers do not send surplus teachers within reasonable time, schools cannot be expected to run without teachers for years together. The division bench, therefore, had observed that ban under Government Resolution dated 02-05-2013 would not be applicable to three categories, one where the recruitment process is already commenced prior to date of the resolution, insofar as appointments made for subjects of English, Maths and Science are concerned and where the recruitment is made to fulfill the backlog of reserved category candidates.

4. Learned AGP purports to counter aforesaid contentions submitting that while petitioner had been appointed, it had not been by following due process. No permission from education officer had been sought nor roster of the education society was verified by BC cell. There were eight surplus English teachers available at the time of appointment of petitioner and that during 2017-18, pursuant to staffing pattern, six English teachers continued to be surplus.

5. Although it is being so submitted, factual position emerges that petitioner claims to have been appointed as NT-C category candidate and that, in the circumstances, reasons which appear to have weighed under impugned order may not be as much germane for refusal to grant approval having regard to decisions of the government referred to in order passed by two division

benches of this court. It appears that proposal of petitioner will have to be taken into account having regard to various government decisions particularly the ones which have been mentioned by division bench of this court, to which there is no reference at all in impugned order. We deem it expedient that reconsideration of proposal shall take place taking into account all relevant aspects involved in the matter. In view of same, impugned order is set aside restituting proposal for approval to appointment of petitioner for reconsideration afresh.

6. Interim relief as operating hitherto shall continue to operate till decision by concerned authority. It is hoped that appropriate decision would be taken expeditiously preferably within a period of six months from decision of this court.

7. Rule is made absolute accordingly. Petition is disposed of.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]