

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 WRIT PETITION NO. 11787 OF 2017

Shivkant s/o Venkatrao Losare,
Age 27 years, Occ. Service
as Shikshan Sevak,
R/o. Yashwant Nagar, Nanded
Tq. & Dist. Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Department of School Education,
Mantralaya, Mumbai - 32.
- 2) Education Officer (Secondary),
Zilla Parishad, Nanded.
- 3) The President/Secretary,
Rani Laxmibai Education Society,
Yashwant Nagar, Nanded
Tq. & Dist. Nanded.
- 4) The Head Master,
Rani Laxmibai Education Society,
Yashwant Nagar, Nanded
Tq. & Dist. Nanded.

...RESPONDENTS

...
Shri. V. S. Panpatte, advocate for petitioner
Shri. S. N. Kendre, AGP for respondents No. 1 and 2
Shri. I. D. Maniyar, advocate for respondents No. 3 and 4
...

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 14-08-2019**

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

1. Rule. Rule made returnable forthwith. Heard learned

counsel for the parties finally, by consent.

2. Indisputably, petitioner had been appointed by the school run by respondent No. 3 on a post falling vacant on account of retirement of erstwhile teacher Smt. J. L. Gade. It is being referred to that the petitioner had been selected and appointed after following due process for recruitment. Permission had been sought from the Education Officer for publishing advertisement. Advertisement had been published thereafter. Under an order dated 01-09-2015 the petitioner had been appointed. Accordingly, petitioner is working since then without any interruption.

3. A proposal for approval of petitioner's appointment had been submitted with the Education Officer in July, 2016. However, the same had not been decided and, as such, the petitioner had approached this court in present writ petition.

4. During pendency of present writ petition, order came to be passed on 14th December, 2017 refusing to grant approval in view of ban imposed on appointments in private schools under Government Resolution dated 2nd May, 2012 until all the surplus teachers are absorbed, as also having regard to Section 5(1) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to that effect.

5. Learned Counsel Mr. Panpatte has taken us through various decisions of this high court, particularly the one, in the case of *Shailaja Ashokrao Walse vs. State of Maharashtra and others* reported in 1999(1) Mh.L.J. 291 putting emphasis on clause "C" therein, reading, thus:

"(c) In case the approval proposal is not decided within a period of two months or three months, as the case may be, the concerned appointment or appointments may be deemed to have been approved, if such appointment or appointments is or are in accordance with the provisions of the M.E.P.S. Act, M.E.P.S. Rules and the Government Resolutions issued from time to time."

6. He also additionally submits that as a matter of fact, advertisement would not be necessary having regard to position in the case of *Nita Ramesh Danane vs. Dombivali Mitra Mandal and others* reported in 2009(1) Mh.L.J. 796. He refers to decision of Writ Petition No.2590 of 2013 for similar reasons. He refers to decision of Division Bench in the case of *Shubhangi Bhagwat Chate and others vs. The State of Maharashtra and others* in order to draw our attention to that in said case this court had issued direction to approve appointment of petitioner as *Shikshan Sevak*. The background in which such directions have been issued can be seen in the contents of para 8 thereof. In those peculiar

circumstances, it appears that grant of approval had been directed. He Purports to refer to a decision in *Writ Petition No.5975 of 2017, Nitin Bhatusingh Thakur vs. The State of Maharashtra and others*, in the same, directions appear to have been issued in the peculiar background involved in said case.

7. On the other hand, learned AGP Mr. Kendre submits that from factual position it emerges that appointment of petitioner cannot be said to have been made after due following recruitment process. The advertisement, as it can be gathered, was not published in widely circulated newspaper. Several other aspects have been to adverted to as referred to in affidavit in reply. It is contended that the appointment is in breach of terms of Government Resolution dated 02-05-2012 and during the ban. The appointment is obviously illegal during the ban imposed by said resolution.

8. While submissions are advanced as above, it would be pertinent to refer to that appointment order had been issued in September, 2015, a proposal for approval to the appointment had been submitted in July, 2016 and no decision had been taken until 14th December, 2017 till the petition had been filed. The position obtaining in the present matter would not be said to be any longer *res integra* for, such situation has been covered under several

orders passed by different Division Benches of this Court.

9. It would be pertinent to refer to order dated 14th July, 2015 passed in writ petitions No.7878 of 2014 and 7879 of 2014, wherein Division Bench, in similar circumstances, has observed thus:

"4. We have considered the submissions canvassed by the learned counsel for the respective parties. It appears that the management has sought permission of the Education Officer vide application dated 17.05.2013, seeking permission to fill in the posts by issuing advertisement and after waiting for more than 15 days thereafter, on 09.06.2013, advertisement was given. Pursuant to the said advertisement, the selection process was conducted and it appears that the petitioners are appointed. Mr. Ghute Patil, the learned counsel for the Education Officer also accepts the fact that the respondent management has absorbed one surplus teacher."

10. So is the case of decision in writ petition No.2590 of 2012 to which reference is made and yet another writ petition No.837 of 2018 where orders have been passed as in writ petition No.7878 of 2014, reading thus:

"I. The impugned order rejecting the proposal seeking approval to the appointment of the

petitioners is quashed and set aside. The Education officer shall consider the proposal submitted by the Head Master seeking approval to the appointment of the petitioners afresh and it shall not reject the same on the ground that prior permission was not obtained or surplus candidates were required to be absorbed. The Education Officer shall consider the position as it stood when the appointments were made.

II. Rule is made absolute in the above terms. The writ petitions are accordingly disposed of. No costs."

11. In view of aforesaid, the position appears to lead us to consider to grant the writ petition partly.

12. Accordingly, the writ petition is partly allowed in terms of prayer Clause "A-1" with the further direction that Education Officer shall take fresh decision on the proposal by taking into account various decisions of this court *inter alia*, given in Writ Petitions No. 8587 of 2016 and 7878 of 2014 and shall not reject the proposal on the ground that prior permission had not been obtained or surplus teachers were required to be absorbed. The education officer should take into account the position prevailing at the time of appointment.

13. With aforesaid, the writ petition is disposed of

accordingly. Rule made absolute in aforesaid terms.

14. It is expedient that the decision would be taken sooner and expeditiously, preferably within a period of three months from the date of receipt of writ of this order.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

sarowar