

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

WRIT PETITION NO.9996 OF 2017

Yojana d/o. Haribhau Manjaramkar .. Petitioner
Age. 36 years, Occ. Service,
R/o. Maganpura, Nanded,
Tq. & Dist. Nanded.

VERSUS

1. The State of Maharashtra .. Respondents
Through its Secretary,
Education & Sports Department,
Mantralaya, Mumbai – 32.
2. The Education Officer (Primary),
Zilla Parishad, Nanded,
Tq. & Dist. Nanded.
3. The Head Master,
Shri Yeashwant Vidhyalaya (Primary)
Maganpura, Nava Mondha, Nanded,
Tq. & Dist. Nanded.
4. The President/Secretary
Yeashwant Shikshan Prasark
Mandal, Ardhapur,
Tq. & Dist. Nanded.

Mr.Vaibhav B. Dhage, Advocate for the petitiioner.
Mr.S.N. Kendre, AGP for respondent/State.
Mr.M.S. Taur, Advocate for respondent No.2.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.
DATED : 02.07.2019**

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

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties finally by consent.

2. Factual position not in dispute is, the petitioner has been appointed as Assistant Teacher in Yeashwant Vidhyalaya (Primary), Nanded. Since then, she has been working in said school as Assistant Teacher without any interruption. There is also no dispute that the petitioner belongs to Scheduled Caste category. The petitioner had been issued permanent appointment order in 1994. Subsequently, she acquired requisite qualification viz. D.Ed. in 2002 and she also had acquired B.Ed. degree in 2004. While respondents No.3 and 4 had submitted proposal for approval to the appointment of petitioner, the Education Officer had preferred to grant approval to the staff ignoring granting individual approval to appointment of petitioner. The petitioner had been before the High Court in Writ Petition No.6796 of 2004, albeit same came to be withdrawn with liberty to file fresh writ petition in 2005. Around December, 2011, the then Head Master Mr. Sonkamble retired. His place had been occupied by Mr. Ebitwar and the petitioner had thereafter occupied the post of Mr. Ebitwar. The proposal for approval accordingly was forwarded by respondents No.3 and 4. However, no approval had been given. One more attempt seeking approval had been made in 2012 pursuant to resolution of respondents No. 3 and 4. The requests of petitioner from time to time for approval were pending consideration of respondent No.2. In writ petition No. 12155 of 2015, the Hon'ble High Court had issued directions to respondent No.2 to decide proposal of petitioner. It appears that respondent No.2 has thereafter issued communication dated 11.04.2017 rejecting proposal for the reasons referred to therein, primarily since there is back log of 252 surplus staff and as per section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, until all surplus employees are

accommodated, the proposal of the petitioner would not be decided and having regard to the order dated 11.07.2017 in writ petitions No.6606 of 2016, 6607 of 2015, 156 of 2016 and companion matters, the proposal for approval to the appointment of petitioner has been rejected.

3. Affidavit-in-reply filed by respondent No.2 shows that there is no dispute that the petitioner belongs to the Scheduled Caste category and had been appointed in 1996. Although it is referred to that no due procedure has been followed while appointing petitioner and she did not possess necessary qualification when she was appointed, there is no dispute that subsequently petitioner had acquired diploma in education in 2002 and bachelor's degree of education in 2004. Further, it is not in dispute that in 2011, the petitioner started occupying post occupied by Mr. Ebitwar, who had become Head Master in place of Mr. Sonkamble, retired on superannuation. The affidavit in reply makes reference to that as there were four teachers declared surplus in 2011-12 from respondent No. 3 school and there was ban on recruitment, claim of the petitioner could not be maintained on that ground.

4. Situation emerges that the petitioner has been continuously working from 1996 and in the interregnum she had acquired educational qualifications and that she is stated to have occupied the place of Mr. Ebitwar. In the circumstances, only reason underlying perhaps that has weighed that till surplus candidates are to be absorbed, no further decision can be taken on proposal for approval to the appointment of petitioner under ban imposed in 2012.

5. In the circumstances, taking into account order passed by Division Bench of this Court dated 15-12-2016 in Writ Petition No. 699 of 2013, we deem it appropriate to issue similar directions as issued in said order. the Education Officer shall decide proposal submitted by respondents No. 3 and 4

for approval to the appointment of the petitioner on its own merits in accordance with law, rules and policy, however, shall not reject it only on the ground that at the relevant time surplus candidates were not absorbed. The process shall be completed as expeditiously as possible, preferably within a period of six months. For said purpose, the impugned order stands set aside.

6. Rule made absolute accordingly. Writ Petition is disposed of in aforesaid terms.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]