

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

WRIT PETITION NO. 11059 OF 2014

1. Gajanan s/o Vishwambhar Patil
Age 26 years, Occu:- Service as
Shikshan Shevak, R/o kalambar,
Tq. Loha Dist. Nanded. ...Petitioner

versus

1. The State of Maharashtra,
Through Secretary,
Department of School Education
Mantralaya, Mumbai-32.
2. The Deputy Director of Education
Latur Region, Latur,
3. Education Officer (Secondary),
Zilla Parishad, Nanded
4. Superintendent,
Pay Unit (Secondary Section),
Zilla Parishad, Nanded.
5. The Head Master,
Shri Sainath Vithalnath Vidhyalya,
Mangalsangvi, Tq. Loha,
Dist. Nanded.
6. The Secretary, Satya Shikshan
Krantikarak Guru Vithaldas
Bhakta Sant Tukaram Shikshan
Prasarak Mandal Mangalsangvi,
Tq. Kandhar Dist. Nanded .. Respondents

Mr V. S. Panpatte, Advocate instructed by Mr H. S. Bali,
Advocate for petitioner

Mr A. S. Shinde, Assistant Government Pleader for
respondents no. 1 to 4

Mr G. G. Suryawanshi, Advocate for respondent no. 5

Mr R. I. Wakode, Advocate for respondent no. 6

CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.

DATE : 8th April, 2019

ORAL JUDGMENT :

1. Aggrieved by communication dated 15-11-2014 by respondent no. 3 where-under permanent approval granted to petitioner's appointment has been purportedly cancelled.

2. Facts giving rise to writ petition which would not be in dispute are, petitioner had approached education officer – concerned authority ascertaining availability of surplus teacher for appointment. Thereafter, respondents no. 4 and 5 published an advertisement in the newspaper dated 16-06-2011 for appointment of two *Shikshan Sevaks* one from open category and the other from other backward class category referring to qualifications required. In response to the same, petitioner had applied for open post and had been selected after due process for the same and had been

issued order dated 01-07-2011 of appointment on probation for a period of three years. He had been appointed on permanent post falling vacant on retirement of person occupying the same. Petitioner's said appointment had been given approval for said period.

3. On completion of probation, petitioner had been issued order dated 19-07-2014 granting permanent approval with effect from 01-07-2014.

4. It appears that respondent no. 3 - education officer (secondary) had received a communication dated 08-08-2014 from the office of Divisional Deputy Director directing him, in view of report submitted by three member committee, to cancel approval accorded to petitioner's appointment. Pursuant to the same, petitioner and respondents no. 3 and 4 were called. Impugned order had been passed on 15-11-2014 cancelling approval to petitioner's appointment for not having examined the roaster, not taking prior permission and since there is backlog of six posts. Thus, the petitioner is before this court.

5. In response to writ petition, respondent no. 3 has submitted reply referring to that petitioner's appointment had been granted approval as *Shikshan Sevak* under order dated 28-08-2012 and subsequently permanent approval had been granted on 19-07-2014.

6. Pursuant to order of this court in writ petition no. 5981 of 2013 passed on 16-01-2014, a three-member committee had been appointed for enquiry into alleged illegal approval to appointments of teachers. In its report to respondent no. 2 – Deputy Director of Education, Latur, in all thirty seven appointments including that of present petitioner had been referred to as liable to be cancelled.

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It is further being referred to that the report of the committee had considered the directions in government resolution dated 06-02-2012 and in view of the same after hearing, approval granted to appointments of teachers including of petitioner had been cancelled for non verification of roaster by the B.C. cell, backlog of six posts, petitioner having been appointed from open category and prior permission for said appointment not having been obtained.

7. After hearing learned counsel, it transpires that case of management is that availability of surplus teachers had been sought from concerned authority and that no surplus teacher had been made available before recruitment process for appointment had been undertaken. While doing so, it appears, to quite a large extent, requirement of compliances under section 5 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 has been adhered-to. The same has not been disputed in the reply.

8. It further appears that an advertisement had been issued for appointment of two *Shikshan Sevak*, one from open category and the other from other backward class category and the petitioner had, accordingly, been appointed as open category candidate on post falling vacant from open category on superannuation of earlier incumbent.

9. Further, it appears that approval for probationary period had been issued to appointment of petitioner as open category candidate on open post and on completion of probation, his appointment had been given permanent

approval in July, 2014. Even otherwise, it is not the case of respondents that the post on which the petitioner had been appointed had been a post reserved under the verified roaster.

10. Enquiry committee of three members had given report based on government resolution dated 06-02-2012 where-under verification of roaster, prior permission and position of backlog has been considered. It does not appear that said government resolution has been made retrospectively applicable.

11. Learned counsel for petitioner and the management refer to an order dated 13-02-2019 passed in writ petition no. 12543 of 2018 which, according to them, relates to persons who have been subsequently appointed after the petitioner by the institution in the very school. The division bench has succinctly referred to emanating position as under :

" 2. The petitioner no. 1 is from Open category and petitioner no. 2 is from Scheduled Caste category. The petitioners were appointed as Shikshan Sevak. The Education Officer granted approval to the appointment of petitioners as Shikshan Sevak thereafter, permanent approval was granted to the appointment of petitioners as Assistant

Teacher. Subsequently, the Deputy Director of Education reopened the proceeding and set aside the approval granted to petitioners as Shikshan Sevak on the ground that there is back-long of one S. T., one V. J., one N.T.-B and two O.B.C posts.

3. The management has filed affidavit-in-reply and has also produced the original register wherein the roaster has been verified by the Assistant Commission, B.C. Cell.

4. From the said roaster, it appears that, still four posts from Open category are vacant. One each from S. C. and S. T., three from O.B.C. and two from V. J. are vacant. It appears that there are vacant posts from Open category. It is not a case that the petitioner no. 1 was appointed on a post not meant for Open category candidate or petitioner no. 2 for S.C. category candidate. Considering the verified roaster, the impugned order does not appear to be proper. "

12. It appears that petitioner's case is on much better footing. The rationale which went into passing aforesaid order, applies with much greater force and would impact petitioner's case favourably.

13. In view of aforesaid, writ petition is allowed in terms of prayer clause (B).

14. Rule is made absolute accordingly.

R. G. AVACHAT,
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-