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

WRIT PETITION NO.12278 OF 2016

Avinash s/o Shivajirao Chavan,
Age: 33 years, Occu: Service,
R/o: Sai Road, Navratna Nagar,
Latur, Tq. and Dist. Latur

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of School, Education,
Mantralaya, Mumbai-32
2. The Education Officer (Secondary),
Zilla Parishad, Latur
3. The President/Secretary,
Kai. Nivruttinath Shikshan Prasarak
Mandal, Bhakashkheda, Udgir,
Tq. Udgir, Dist. Latur
4. The Head Master,
Kedarnath Secondary School,
Shushiladevi Nagar, Latur,
Tq. and Dist. Latur

..RESPONDENTS

Mr V. S. Panpatte, Advocate for petitioner;
Ms R. P. Gour, A.G.P. for respondent Nos.1 & 2;
Mr S. G. Rudrawar, Advocate for respondent Nos.3 & 4

**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 19th June, 2019

ORAL ORDER:

Heard Mr Panpatte, learned Counsel appearing on behalf of the

petitioner extensively.

2. The petitioner, by way of present writ petition challenges the order dated 29th February, 2016, whereby the proposal submitted for grant of approval to the Education Officer (Secondary), Zilla Parishad, Latur, is turned down. The Education Officer, referring to certain reasons informed the petitioner that request for grant of approval cannot be considered. The petitioner, on the backdrop of challenge to the said order dated 29th February, 2016, framed the prayers in the petition and the basic prayers are prayer clauses (B) and (C), which read thus :

"B) By a Writ of certiorari or any other appropriate or direction in the like nature the decision / order dated 29.02.2016 passed by the respondent No.2 - Education Officer (S) thereby refusing to grant approval to the appointment of the petitioner as Shikshan Sevak in respondent No.4 - school may please be quashed and set aside.

C) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent No.2 - Education Officer (S) may please be directed to grant approval to the appointment of the petitioner as Shikshan Sevak in the respondent No.4 - school forth with and release arrears of the salary of the petitioner."

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3. It is vehemently submitted by Mr Panpatte, learned Counsel for the petitioner that in response to an advertisement dated 27th December, 2012, published in local newspaper "Punynanagari", the petitioner submitted his claim for appointment and he was appointed by an order dated 7th January, 2013. The petitioner, though completed tenure as a "Shikshan Sevak" for three years, no approval was granted and as such, he had approached this Court by filing Writ Petition No.152 of 2015. The Division Bench of this Court directed the Education Officer to take a decision on the proposal so submitted.

4. Mr Panpatte, learned Counsel for the petitioner then submitted before us that the reason assigned in the order impugned in the petition is, as there is surplus teachers who have not been absorbed till date of passing of the order, the approval cannot be granted in favour of the petitioner. He then submitted that in the communication dated 29th February, 2016, it is stated that the ban imposed by the State Government was lifted under the Government Circular dated 9th February, 2016 and there is a reference of Government Resolutions/Circulars dated 20th June, 2014, 19th July, 2014 and 20th August, 2014.

5. Mr Panpatte, learned Counsel for the petitioner then by heavily relying on the judgment of this Court in a bunch of writ petitions,

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namely, Writ Petition No.10580 of 2015 and other connected petitions, the judgment of the Division Bench of this Court, dated 10th July, 2017 in a bunch of writ petitions, namely, Writ Petition No.8587 of 2016 with other connected writ petitions and the judgment of this Court in Writ Petition No.3945 of 2017, dated 20th August, 2018, submitted that the issue involved in the present petition is no more res integra and as per the judgment of this Court, the Division Bench of this Court carved out three categories. These categories are :

- (a) Where the recruitment process is already commenced prior to GR dated 2nd May, 2012;
- (b) Where the appointments made for filling up vacancies in English, Mathematics and Science; and
- (c) Where the recruitment is made to fulfill the backlog of reserved categories candidates.

It is the submission of Mr Panpatte, learned Counsel for the petitioner that the case of the present petitioner falls in category (c).

6. Mr Panpatte then submitted before us that the petitioner, who had already completed three years tenure of service as a "Shikshan Sevak", by way of a deeming provisions of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 and more particularly Section 5 (2)(a) thereof, acquired the status of "permanent teacher" and as such, now only on technical grounds, if

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the approval is rejected, the petitioner would be subjected to a great prejudice. It was also the submission of Mr Panpatte, learned Counsel that the Government Resolutions dated 13th August, 2004 and 25th October, 2004 deal with the procedure of absorption of surplus teachers. It was then submission of Mr Panpatte, learned Counsel for the petitioner that in the judgment and order dated 9th March, 2017, passed in Writ Petition No.10580 of 2015 with connected writ petitions, the Division Bench was pleased to observe that the General Administration Department, Government of Maharashtra, has issued Government Resolution on 13-4-2011 and as a special case, allowed the institutions to fill-up the posts reserved for the backward category and, therefore, the ban imposed by the Government Resolution dated 2-5-2012 would not apply to the case of the petitioner, whose appointment was from NT-C reserved category. An attempt of the learned Counsel for the petitioner was to submit before us that the petitioner is similarly circumstanced with those petitioners, who had approached this Court and were from reserved category and failure of absorption of surplus teachers would not come in the way of the present petitioner. Mr Panpatte reiterated this submission by inviting our attention to para 6 of the judgment and order of the Division Bench, dated 10th July, 2017. The observations of the Division Bench read thus:

"6. We find that if the Education Officers do not send

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the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012."

7. Then it was the submission of Mr Panpatte, learned Counsel for the petitioner that an attempt is made by respondent - Education Officer (Secondary), Zilla Parishad, Latur to supplement or supplant the reason in the affidavit-in-reply, which is not the reason incorporated in the order impugned in the petition. In support of this submission, Mr Panpatte invited our attention to paragraph Nos.3 and 4 of the affidavit-in-reply filed on behalf of respondent No.2. These paragraphs read thus:

"3. I say and submit that, in view of the directions issued by this Hon'ble Court dt. 14.1.2018, the deponent is filing the present affidavit as under.

4. The deponent most respectfully say and submit that, 109 Assistant Teachers were declared as surplus in the year 2013-14. In the year 2015-16 - 190 Assistant Teachers were declared as surplus. In the year 2016-17 total 163 Assistant Teachers were declared as surplus. However, in

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the year 2017-18 there was 136 Assistant Teachers were declared as surplus. I say that, at present 100 Assistant Teachers were accommodated out of 136 surplus Assistant Teachers, however, 18 teachers have been resumed their duties and 36 surplus Teachers have not been accommodated at present. Therefore, at present 36 Assistant Teachers are surplus in Latur district."

Mr Panpatte, learned Counsel for the petitioner then submitted that such an attempt of supplanting the reasons is disapproved by the Hon'ble the Apex Court reiterating in its judgment in the matter of **Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi**, reported in **1978 AIR(SC) 851**.

8. Learned Asstt. Govt. Pleader appearing for the Education Officer opposes the writ petition by inviting our attention to the affidavit-in-reply and more particularly an annexure to affidavit-in-reply, dated 24th January, 2017, namely Exh.'R-1'.

9. Insofar as the stand of respondent Nos.3 and 4 is concerned, the same is reflected in their affidavit-in-reply filed by one Mr Govind Narsing Palimkar, Head Master. It is stated in the said affidavit-in-reply by respondent Nos.3 and 4 that the petitioner is appointed as a Shikshan Sevak in the year 2012-13 by issuing advertisement dated 27th December, 2012 published in Punyanagari newspaper. It is further specifically stated in the affidavit-in-reply that no prior

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permission is taken by these respondents from the Education Department prior to issuance of advertisement dated 27th December, 2012. But the petitioner is appointed in respondent No.4 as a Shikshan Sevak for the year 2012-2013. Then further statement is made in the affidavit-in-reply that respondents have not submitted the list of vacant teachers on the on-line system as there was no any vacant post in the respondent school as the petitioner is appointed in the year 2012-2013. This statement is in response to the order of this Court, dated 18th March, 2019.

10. On hearing the above mentioned submissions of the rival parties, we are of the opinion that though the submissions of learned Counsel for the petitioner may look attractive at the first blush, considering the peculiar facts which emerged on perusal of the documents placed on record, the same cannot be accepted at this stage. We make it clear that the view taken by the Division Bench of this Court referred to in the order dated 9th March, 2017 was then followed by the Division Bench of this Court in the judgment dated 10th July, 2017 and the same is also followed by the Division Bench of this Court in the judgment and order dated 20th August, 2018, to which one of us was party (Prasanna B. Varale, J.), but at the cost of reiteration, we state that the peculiar facts emerged from the perusal, prompted us to take a different view in the present matter.

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11. Now, as first thing to come first, the petitioner submitted in the petition that an advertisement was issued in the local newspaper of 27th December, 2012 and as the post was vacant for a candidate belonging to NT-C category, the petitioner, in response to this advertisement submitted his candidature. Perusal of the advertisement shows that there were three posts notified in the advertisement against two subjects. The subjects are mentioned as Marathi and English. Interestingly enough, against first post, there is no reference to any subject. Insofar as category is concerned, it states that there are two posts available for the candidates belonging to OBC category and stated that for others, one post is available. It is not notified in the advertisement that this post is for a candidate belonging to NT-C category. Be that as it may. The submission of learned Counsel for the petitioner is, in response to an advertisement published in newspaper, the petitioner submitted his claim. The appointment letter states that the application was submitted by the petitioner on 6th January, 2013 and in response to his application dated 6th January, 2013, he is appointed from 7th January, 2013. The reply filed by respondent Nos.3 and 4 states that an advertisement was issued on 27th December, 2012 in "Punyanagari" newspaper. After the advertisement, the petitioner is appointed on 7th January, 2013 in respondent No.4 - School.

12. It was vehemently submitted by Mr Panpatte, learned Counsel

for the petitioner that for grant of approval from the Education Officer publishing an advertisement is not prerequisite. It was then submitted by Mr Panpatte that if there is no decision by the Education Officer on the proposal requesting the Education Officer to grant permission for issuance of an advertisement for a considerable long period, the management can proceed to fill up the post. True it is, the institute cannot wait for a long period seeking approval of the Education Officer for publishing an advertisement. But what is important is, the exercise of issuing an advertisement is a platform of forum so that the desirous eligible candidates can stake their claim for the vacant posts, which are to be filled in and the institute or the management can certainly select the best suitable candidate. In the present case, what we see is, the divergent stand of the management. On one hand, the management states in affidavit-in-reply that the petitioner, in response to the advertisement approached to the respondents and was appointed on 7th January, 2013. In the appointment order, it is clearly stated that, on receipt of application of the petitioner, dated 6th January, 2013, the petitioner was appointed from 7th January, 2013.

13. Even accepting the position that there was no prerequisite of approval by the Education Officer for issuance of an advertisement but then if an appointment of a candidate is merely a farce and a play between the management and one person, it is certainly an objectionable exercise for the reason that this is whole exercise blacks

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out the concept of fair play and equal opportunity to the meritorious and eligible candidates, who can stake their claim and are ready to compete. Accepting the position as reveals in the present petition is nothing but an act of creating a monopoly of management or unfair play of the management selecting a candidate for the reasons best known to it. Appointment of the teacher certainly is a serious issue as the teacher is responsible to impart knowledge to the students. This cannot be a private affair of two persons or one person on one hand and institute on the other hand.

14. Mr Panpatte, learned Counsel for the petitioner made an attempt at this stage before us that interviews were conducted and the petitioner was selected along with five candidates. This submission of Mr Panpatte on the backdrop of affidavit-in-reply filed on behalf of the management not even remotely referring to the fact that in response to the advertisement, certain candidates submitted their applications, there was interview and the candidates were selected by the duly constituted committee but only shows that the petitioner and the management are hand in gloves. The blissful silence of the management only justifies our observation that the exercise of the management and the attempt of the petitioner to show that he was selected in a proper selection course, is nothing but a big fallacy. An attempt was made by learned Counsel for the petitioner to submit before this Court that the respondents - authorities are trying to

supplant the reasons in the affidavit-in-reply. Even we could not find any favour with this submission of Mr Panpatte for the reasons that the Counsel for the petitioner is only referring to the statement in affidavit-in-reply, dated 28th January, 2019, whereas in the earlier affidavit-in-reply, dated 24th January, 2017, an order is annexed to the affidavit-in-reply and the learned Asstt. Govt. Pleader rightly pointed out said annexure. Perusal of the annexure shows that said annexure is the copy of the order dated 21st February, 2016. This order then refers to non-submitting the material before the education authorities before proceeding for filling up the posts.

15. Mr Panpatte, learned Counsel for the petitioner vehemently submitted before us that failure of the management not to fill up the surplus teachers cannot be an impediment for approval to the petitioner. It is also submitted by Mr Panpatte that the Division Bench of this Court takes care of such situation and for this purpose, Mr Panpatte invited our attention to the order of the Division Bench dated 10th July, 2017 and more particularly para 6 thereof. There cannot be any dispute on the observations of the Division Bench finding that the delay by the Education Officer in sending the surplus teachers within reasonable time would result in hampering the activities of school and this situation cannot be a welcome situation. Even accepting this position as it is, on reading the relevant provisions i.e. Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service)

Regulation Act, 1977, it is more than clear that inaction on the part of the Education Officer cannot be said to be a premium to the institute or the management. Section 5 of the Act casts obligation on the management to intimate the Education Officer of the fact of vacancy. Interestingly enough, even though Mr Panpatte heavily criticizes on the action of the Education Officer not forwarding list of the surplus teachers though there are 'n' number of surplus teachers available, nothing is placed on behalf of the management to show that it is preliminary obligation of intimating the Education Officer about the vacancy being available so as to fill up the said vacancy. Mr Panpatte, in his oral submission made an attempt to submit before us that the fact of vacancy was within the knowledge of the Education Officer. It was the submission of Mr Panpatte that as one teacher from the said school stood retired, the post became vacant and this intimation was forwarded to the Education Officer and as such, the Education Officer was having knowledge of this fact. When confronted with Mr Panpatte, he submitted before us that the statement made by him is on the basis of record made available to the petitioner. Now, surprisingly, this so-called record is not even referred to in the reply by the management with their documents and these documents not being a part of the reply of the management. Now, this oral submission of Mr Panpatte, nowhere gets support. Interestingly enough, the management, in its affidavit-in-reply is too shy to make any statement

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on the aspect of how the post was falling vacant for which the so-called advertisement was issued. Thus, even on this count, we are unable to accept the submission of Mr Panpatte, learned Counsel for the petitioner.

16. Considering all the above mentioned facts, in our opinion, the appointment of the petitioner was only a private affair between the petitioner and respondent Nos.3 and 4 - management. There is absolutely no material to show that an opportunity had been provided to the other eligible candidates to stake their claim for the post, which was vacant in the school of respondent No.3. There was no contest and in this situation, the selection of the petitioner was only a farce. This Court would certainly not be a party to such a private affair, wherein the management is blissfully silent, casual in discharging its obligation and the petitioner, who is overzealous and apart from his own case, is not shy of advancing the case of the management also.

17. We are of the view that the petition is wholly devoid of any merit. The only inescapable conclusion which can be drawn on the basis of facts which are referred in the petition is, the petition deserves to be dismissed and same is accordingly dismissed.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

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