

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10014 OF 2018

Rajlaxmi Rahul Gadekar

...Petitioner

vs.

The State of Maharashtra
through the Secretary & Ors.

...Respondents

- Mr. N. V. Bandiwadekar a/w. Mr. Vinayak R. Kumbhar, Mkr. Ashutosh B. Patil i/b. Ms. Ashwini N. Bandiwadekar, Neha N. Bandiwadekar, Advocate for Petitioner.
- Ms. M. S. Bane, AGP for Respondent Nos.1 & 2/ State.

CORAM : C. V. BHADANG, J.

DATE : 19th DECEMBER, 2019

P.C. :

. Rule made returnable forthwith. The learned Assistant Government Pleader waives service on behalf of the respondent Nos.1 and 2. The respondent Nos. 3 and 4 are not the contesting parties. Heard finally with the consent of parties.

2. The challenge in this petition is to the order dated 31/7/2018, passed by the second respondent, refusing to grant approval to the appointment of the petitioner, as Shikshan Sevak in the respondent No.4 school, with effect from 1/8/2017.

3. The brief facts are that the petitioner who belongs to the Scheduled Caste was appointed against reserved vacancy in pursuance of an advertisement dated 26/7/2017. The resolution of

the school committee dated 31/7/2017 and the copy of the appointment letter issued to the petitioner on 1/8/2017 is there on record. The fourth respondent sent a proposal for approval of the appointment to the second respondent on 8/9/2017. The second respondent by impugned order dated 31/7/2018 has refused to grant the approval on the ground that as per Government Resolution dated 2/5/2012 unless the exercise about absorption of surplus teachers is complete, no approval can be granted.

4. I have heard Mr. Bandiwadekar, learned counsel for the petitioner and learned AGP for the respondent Nos.1 and 2. Perused record.

5. Mr. Bandiwadekar, learned counsel for the petitioner has placed reliance on the decision of this Court in a batch of petitions being Writ Petition No.8587/2016 and others, decided on 10/7/2017. It is submitted that this Court has culled out three categories in which such approval cannot be withheld namely –

- 1) where the recruitment process is already commenced prior to GR dated 2/5/2012;
- 2) where the appointments made are for filling up vacancies in English, Mathematics and Science ;
- 3) where the recruitment is made to fulfill the backlog of reserved category candidates.

6. It is submitted that present case falls under the third category and thus the Education Officer could not have refused to grant

approval.

7. Learned AGP has referred to the affidavit in reply filed by Mr. Kiran Lohar. It is not disputed that the approval could not have been refused for the reasons as mentioned in the order dated 31/7/2018. However, the refusal of the approval is now sought to be supported on the basis of the Government Resolution dated 20/6/2018 in which the Government has laid down specific guidelines for the recruitment of teachers. Further reliance is placed on GR dated 23/6/2017. It is thus submitted that the impugned order is sustainable albeit for reasons different than the ones given in the impugned order.

8. Mr. Bandiwadkar, learned counsel for the petitioner, in rejoinder, has placed reliance on the decision of the Supreme Court in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others AIR 1978 Supreme Court 851** in order to submit that the statutory authority cannot be permitted to support the order for reasons different than the ones as contained in the impugned order. He therefore submits that the second respondent be directed to grant approval.

9. I have carefully considered the circumstances and the submissions made. It is not in dispute that the petitioner belongs to the Scheduled Caste category and was appointed against a reserved post. The perusal of the impugned order shows that the approval has been refused, placing reliance on the GR dated 2/5/2012 and on the ground that the absorption of the surplus teachers unless complete,

the grant of approval cannot be considered. As noticed earlier, the said order is now sought to be supported on grounds different than the one contained in the impugned order. In the affidavit in reply, the second respondent has stated that the approval could not have been refused, placing reliance on the GR dated 2/5/2012. The question is whether the second respondent can now support the impugned order for reasons different than the ones, as contained in the impugned order.

10. The Supreme Court in the case of **Mohinder Singh Gill and Anr.** (supra) has held thus in para 8 of the judgment.

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he

intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

11. It can clearly be seen that the present case is governed by the third category as mentioned in para 9 of the decision of this Court in Writ Petition No.8587/2016 and others. In this regard, reliance can also be placed on decision of this Court in Writ Petition No.1312/2017 and others decided on 27/6/2018, wherein this Court in similar circumstances has directed the Education Officer to approve the appointment of the petitioners whose appointments were made in reserved posts, if there are no other objections to their appointment.

12. In the result, the petition is allowed. The rule is made absolute in terms of prayer clause (b) with no order as to costs.

(C. V. BHADANG, J.)