

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

WRIT PETITION NO.332 OF 2019

Ms Satpute Preeti Tatyarao and another ... Petitioners

Versus

The State of Maharashtra and another ... Respondents

.....

Mr. N. V. Bandiwadekar a/w Sagar Mane, Vinayak Kumbhar and
Abhishek patil I/b Ms Ashwini N. Bandiwadekar for the
petitioners.

Ms V. S. Nimbalkar, AGP for the Respondents-State.

.....

CORAM : M. S. KARNIK, J.

DATE : 14th MARCH, 2019.

P. C.:

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

2. The present petition is filed under Article 226 and 227 of
the Constitution of India challenging the order dated 14th
December, 2018 passed by the respondent No.2 - Education
Officer (Secondary), Zilla Parishad, Thane, refusing go grant
approval to the appointment of petitioner No.1 as Shikshan
Sevak for English subject. The petitioner No.1 was appointed as
full time Shikshan Sevak for a period of three years in the school
of petitioner No.2 with effect from 22nd July, 2013. The petitioner
belongs to the S.C. Category.

3. The Headmaster of petitioner No.2 school retired and hence, senior most teacher who also belongs to the S.C. Category came to be promoted as Headmaster. Thus, according to the learned Counsel for the petitioner, one post of S.C. Category became available. Moreover, learned Counsel for the petitioner would submit that the petitioner was appointed for teaching English subject. Learned Counsel invited my attention to the advertisement at page 40. The said advertisement shows that one vacancy is to be filled up for English subject. It is also mentioned that priority would be given to the candidate who belongs to the S.T. Category.

4. Learned Counsel for the petitioners submits that on the earlier occasion, the Division Bench of this Court by order dated 19th July, 2018 in Writ Petition No.10518 of 2016, directed the Education Officer to decide proposal for approval of the petitioner's appointment. He would further submit that the Division Bench of this Court considered the impact of the ban by Government Resolution dated 2nd May, 2012. According to him the petitioner's case squarely falls in clause (b) of paragraph 9 of the dated 10th July, 2017 passed by Division Bench of this Court in Writ Petition no. 8587 of 2016 and as such the ban does not

apply to her. He submits that now its almost 6 years she has served the school honestly and sincerely.

5. Learned AGP vehemently opposed the petition. According to her, there are four posts in the school and the vacancy which is available was to be filled up by appointing the candidate who belongs to S.T. category. Even, the petitioner was called upon to submit report of the BC Cell as regards the roster. However, the petitioner has failed to submit report of the BC Cell. According to her, the appointment of petitioner No.1 as against the post which is meant for S.T. category is illegal and therefore the Education Officer was justified in rejecting the proposal.

6. Inviting my attention to the affidavit-in-reply filed on behalf of the Education Officer, the learned AGP would contend that in the year 2001 the petitioner No.2 had already appointed Mr. Vishwas Sadafule who belongs to the S.C. category and who is working as an Assistant Teacher. Thus, there is no backlog available for S.C. category. She therefore submits that the order passed by the Education Officer does not warrant any interference. Granting approval to the petitioner No.1's appointment would be contrary to law is her submission.

7. Heard learned Counsel for the parties.

8. The advertisement dated 15th July, 2013 which is at page 40 clearly stipulates that the appointment is to be made to the post meant for English subject teacher. It is further mentioned that priority would be given to the candidate who belongs to S.T. category. It is not in dispute that one Shri Rajendra Yadavrao Gawali who was working as Assistant Teacher and belonging to the S.C. category came to be promoted as Headmaster w.e.f. 1st June, 2013. The appointment of Shri Rajendra Yadavrao Gawali as an Assistant Teacher was approved. In these circumstances on the promotion of Mr. Rajendra Yadavrao Gawali as Headmaster one vacant post of Assistant Teacher belonging to S.C. category was very much available. The petitioner belongs to the S.C. category. Moreover, the advertisement stipulates that the post for teaching English subject is to be filled up.

9. Learned AGP would contend that the petitioner cannot take benefit of the decision of Division Bench in Writ Petition No.8587 of 2016. According to her, Clause (c) of paragraph 9 of the said decision clearly provides that the ban will not apply when the recruitment is made to fulfil the backlog of reserve category candidates. Learned AGP would submit that the petitioner management has not submitted the report of BC cell and hence, their action to fill up the post meant for S.T. category is not

justified. However, reading of the decision of the Division Bench of this Court in Writ Petition No. 8587 of 2016 would indicate that the ban as per the G.R. dated 2nd May, 2012 will not apply to the petitioner No.1's appointment. As per the judgment of this Court, the appointments made for filling up vacancies of Teachers in English, Mathematics and Science subjects will not be affected by the ban. The petitioner No.1 who belongs to S.C. category was appointed to teach English subject. As indicated earlier, Shri Rajendra Gawali, who belongs to the S.C. category was later promoted as Headmaster. This post on which Shri Rajendra Gawali was appointed as Assistant Teacher was already granted approval. The petitioner No.1 apart from being appointed to teach English subject also belongs to the S.C. category, which post had become vacant by promotion of Shri Rajendra Gawali who belongs to S.C. category.

10. In my opinion, the Education Officer was not justified in rejecting the proposal for granting approval to the appointment of petitioner No.1. The impugned order passed by the Education Officer is therefore quashed and set aside. The writ petition is allowed in terms of prayer clause (b). Rule is made absolute with no order as to costs.

(M. S. KARNIK, J.)