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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 606 OF 2018

Uday Prabhakar Naik ..Petitioner
vs.
Nathpanthi Gosavi Samaj
Ekyavardhak Mandal, Sindhudurg & ors. ..Respondents

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Shri S.C. Naidu i/b. Ms. Geetika Rajpal for petitioner.
Shri V.S. Kumbhar i/b. Ms. A.N. Bandiwadekar for respondent
Nos. 1 and 2.
Mrs. V.S. Nimbalkar, AGP for respondent Nos.3 to 5.

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CORAM : M.S.KARNIK, J.

DATE : 11th APRIL, 2019

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith by consent
of the parties and heard finally.

2. By this Petition filed under Articles 226 and 227 of
the Constitution of India, the petitioner is challenging an order
dated 19/12/2017 passed by respondent No.4 rejecting the
proposal of the Management for approval to the appointment of
the petitioner as an Assistant Teacher.

3. The brief facts of the case are, the petitioner was appointed in respondent No.2- School on 23/11/2000 for the Academic Year 2000-2001. The Management by an advertisement dated 31/7/2001 which at page 147 of the paper-book, advertised three posts of Assistant Teachers and one post of Superintendent.

4. Pursuant to this advertisement, three Assistant Teachers and one Superintendent are appointed. A proposal for approval of the appointments was submitted by the Management on 1/10/2001. As per the proposal, approval was sought for appointment of Shri Laxman Gajanan Palav and Shri Anand Laxman Karpe against the Open Category and that of Shri Pralhad Jadhav against the SC Category. Ms. Usha Vishwanath Gosavi belonging to NT Category was appointed as Superintendent. By an order dated 13/8/2001, respondent No.4 granted approval to the aforesaid appointments.

5. It appears that Shri Pralhad R. Jadhav, Assistant Teacher, belonging to SC category, resigned on 1/1/2002. Thereafter, the Management appointed the petitioner against this vacancy on 1/2/2002.

6. Respondent No.1 submitted the proposal to respondent No.4 seeking approval to appointment of petitioner as Shri Pralhad R. Jadhav resigned from the post and in that vacancy the petitioner is appointed from 1/2/2002 till 30/4/2002. Respondent No.4 by an order dated 22/2/2002 granted approval to the petitioner as an Assistant Teacher in Open Category from 1/2/2002 till 30/4/2002. The services of the petitioner were continued for the year 2002-2003 by an order dated 13/6/2002. A proposal dated 30/10/2002 was submitted by respondent No.1 to respondent No.4 in respect of three teachers and one superintendent. Respondent No.4 on 24/3/2003 granted this approval for the period from 20/11/2002 to 30/4/2003. This approval was also in respect of the petitioner though on temporary basis. The Management

informed the petitioner and other teachers that their appointments were made on temporary basis and as the said tenure would come to an end on 2/5/2003, therefore advance intimation of termination was given to them. These three teachers including the petitioner and one superintendent filed Writ Petition No. 3356 of 2003 in this Court.

7. This Petition came to be disposed of by this Court by an order dated 7th July, 2017. This Court directed respondent No.4 to consider the proposals of the petitioners sympathetically. It is observed that the petitioners are working for more than 17 years. Moreover, in paragraph 9 a statement on behalf of the Management is recorded that “in the event the staffing pattern is revised and/or additional post is sanctioned, the respondent No.1 Management will adopt the reservation policy and appointment of a Scheduled Caste Category candidate shall be made.” This Court directed respondent No.4 to consider the proposals for approval of the appointment of three teachers and one superintendent.

8. By impugned order at page 111, the proposal for approval of the petitioners' appointment is rejected. It is rejected on the ground that initial appointment of the petitioner is illegal as the same is without following proper selection process as prescribed and without issuing any advertisement. It is also rejected on the ground that roster was not followed in as much as the petitioner who belong to Open Category was appointed in the post meant for SC Category. The respondent No.4 was of the view that of the 3 posts of Assistant Teachers, 2 incumbents from Open Category can be granted approval. As there is a backlog of 1 SC candidate, the petitioner's approval stands rejected.

9. Learned Counsel for petitioner submitted that this Court vide its order dated 7/7/2017 in clear terms directed respondent No.4 to consider the proposals of the petitioners sympathetically. According to him, initially, of the 3 posts of Assistant Teachers, Mr. Pralhad Jadhav belonging to SC category was appointed. Though 2 teachers from Open Category are appointed, one of them in fact belongs to OBC category. Shri

Naidu relying upon Rule 9(7) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 (hereinafter referred to as “the said Rules” for short) submitted that the reservation cannot exceed 33%. He submits that since there are three posts, one has to be for reserved category and other two will have to be filled in by Open Category candidates. Shri Naidu would submit that once this Court has recorded the statement of the Management that they will adopt the reservation policy and appointment of S.C. category candidate shall be made, then all that was required to be done by respondent No.4 was to grant approval to petitioner. The petitioner is working in the said post for more than 17 years. Respondent No.4 is not expected to go beyond what is observed by this Court. In any case Shri Naidu would submit that as of now there is one teacher who belongs to OBC (Shri Karpe) who is working. Though Shri Karpe was appointed against Open Category, in the peculiar facts, the respondent No.4 could have considered Shri Karpe's appointment as against a reserved post.

10. Learned AGP on the other hand supported the impugned order passed by respondent No.4. She vehemently submitted that the proposal has to be scrutinized in terms of the rules and circulars which are applicable. She would submit that initially a proposal was submitted by the Management for appointing two Open Category candidates and one belonging to SC category which was approved. According to her, after SC Category candidate resigned, in his place, without following the proper selection procedure, the petitioner was appointed. According to learned AGP, said appointment was made without issuing any advertisement. Learned AGP would further submit that the appointment of Shri Karpe, Assistant Teacher was never against the reserved post. According to her, though he is belonging to OBC category, but he was always shown as Open Category candidate and even his approval is against Open Category. She would submit that now a plea is raised by petitioner that as Shri Karpe belongs to OBC Category therefore the reservation of 33% prescribed by Rule 9(7) is fulfilled. This according to her is unacceptable. She would submit that there is

a back-log of one post of SC category and hence roster is not followed. According to her, the petitioner was appointed on temporary basis and as stated earlier he was appointed against the post reserved for SC category after Shri Jadhav who belonged to S.C. category resigned. She therefore urged that such a back door entry of the petitioner, contrary to the Rules and reservation policy is impermissible. According to her, the proposal for approval is rightly rejected.

11. I have heard learned Counsel for the petitioner and learned AGP and I have also gone through the Petition, annexures and the impugned order.

12. There is no dispute that initially an advertisement was issued for 3 posts of Assistant Teachers. Shri Karpe, Shri Palav, who belonged to Open Category were appointed in 2 posts. Shri Jadhav belonging to SC category was appointed in the 3rd post. Shri Jadhav resigned in 2002. The petitioner was appointed on temporary basis in place of Shri Jadhav on a

reserved post. When the Management proposed to terminate the services of these temporary teachers, they approached this Court by way of Writ Petition no. 3356 of 2003. This Court by order dated 7th July, 2017 disposed of the Petition by directing respondent No.3 to consider the proposals for approval of the petitioners therein which included the present petitioner as well. It would be material to refer to paragraphs 9 and 10 of the order passed by this Court which read thus :-

“9. The statement of the learned Counsel for the Respondent Nos.1 and 2 on instructions of Mr. Bhalchandra Dattaram Gosavi, Secretary, Nathpanthi Gosavi Samaj Aikyavardhak Mandal, Sindhudurg, who is present in Court, states that in the event the staffing pattern is revised and/or additional post is sanctioned, the Respondent No.1 Management will adopt the reservation policy and appointment of a Scheduled Caste Category candidate shall be made.

10. Since the Petitioners are working for more than 17 years and in view of the statement given on behalf of the Respondent No.1 Management that they shall adopt the reservation policy and appointment of a candidate from Scheduled Caste Category shall be made as provided herein above, the proposals of the Petitioners shall be considered sympathetically.”

13. It was therefore incumbent for the respondent No.4 to have considered the proposal for approval of the appointment of petitioner in light what is observed by this Court in the order

dated 7th July, 2017. The said order is not challenged and has thus attained finality.

14. Initially two Open category candidates and one SC category candidate came to be appointed against three posts of Assistant Teachers. However, when Shri Jadhav resigned in 2002, the petitioner was appointed in his place. The petitioner, who belongs to the Open Category continued since then.

15. Shri Karpe was initially appointed against Open Category but factually he belongs to OBC category. The position since 2002 is that there is one candidate who belongs to OBC category and two belonging to Open Category which includes the petitioner who are occupying the posts of Assistant Teachers. All these facts were before the Division Bench of this Court when it passed the order dated 7/7/2017.

16. In my opinion, once this Court directed respondent No.3 to consider the proposal of petitioner in view of the

submission made on behalf of the Management that “in the event the staffing pattern is revised and/or additional post is sanctioned, the respondent No.1 Management will adopt the reservation policy and appointment of a Scheduled Caste Category candidate shall be made.”, then it was not open for respondent No.4 to have gone into the aspect that proper selection process or roster was not followed before appointing the petitioner. The respondent No.2 should have dealt with the proposal in terms of the order passed by this Court. It is in this view of the matter that I do not accept the submissions of learned AGP. In any case factually, there is one Assistant Teacher belonging to OBC category who is presently working. In paragraphs 9 and 10 of the order dated 7th July, 2017 this Court has clearly observed that “the proposals of the petitioners shall be considered sympathetically”. Respondent No.4 should not have then rejected the proposal on the grounds which are mentioned in the impugned order. In the absence of a challenge to the order dated 7/7/2017, the same has attained finality. The respondent No.4 could not have re-opened the issues already

concluded. It is not as if this Court permitted the respondent No.4 to take a fresh decision on the proposal uninfluenced by what is observed in the order dated 7/7/2017.

17. In the light of the fact that petitioner has been working for more than 17 years as an Assistant Teacher and the statement already recorded by this Court that “in the event the staffing pattern is revised Management shall adopt reservation policy and appoint suitable candidate from SC category”, the impugned order is unsustainable. The Petition deserves to succeed.

18. The impugned order is quashed and set aside.

19. Respondent No.4 is directed to approve the proposal for appointment of petitioner and pass appropriate orders within a period of four weeks from the date of uploading of this order.

20. Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)