

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

WRIT PETITION NO.4005 OF 2018

Shri Awate Ganesh Gurunath

...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 28/12/2017, 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 15/6/2012.

3. The brief facts are that the petitioner who belongs to the Scheduled Tribe category was appointed against reserved vacancy in pursuance of an advertisement dated 23/5/2012. The resolution of

the school committee dated 17/6/2012 and the copy of the appointment letter issued to the petitioner on 15/6/2012 is there on record. The fourth respondent sent a proposal for approval of the appointment to the second respondent. The second respondent by impugned order dated 28/12/2017 has refused to grant 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. Bandiwadkar, learned counsel for the petitioner and learned AGP for the respondent Nos.1 and 2. Perused record.

5. Mr. Bandiwadkar, 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, in the case of **Smt. Munoli Rajashri Karabasappa vs. State of Maharashtra through Secretary and Ors.** 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 are made for filling up vacancies in English, Mathematics and Science ;
- 3) where the recruitment is made to fulfill the backlog of reserve categories 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 Ms. Chitra Dighe on behalf of second respondent and has submitted that the approval has been rejected as the appointment was made on 15/6/2012 and thus was contrary to the ban imposed on the recruitment as per the Government Resolution dated 2/5/2012. In para 4 of the affidavit in reply, it is stated that as per the subsequent Government Resolution dated 24/8/2018, the proposal will be decided within four weeks.

8. I have considered the circumstances and the submissions made. It is not in dispute that the petitioner belongs to Scheduled Tribe category and was appointed against a reserved post. A perusal of the impugned order shows that the approval has been refused only on the ground that the appointment was subsequent to the ban imposed by the Government Resolution dated 2/5/2012. As noticed earlier, this Court in the case of **Smt. Munoli Rajashri Karabasappa** (supra) has inter alia held that where the recruitment is made to fulfill the backlog of reserve category candidates, the approval cannot be refused on any such ground.

9. In this regard, reliance can also be placed on decision of this Court in Writ Petition No.12003/2017 & others (Sachinkumar Balasaheb Norje Vs. State of Maharashtra & others) decided on

15/1/2018 wherein this Court in similar circumstances, has directed the Education Officer, to approve the appointment of the petitioners, whose appointment were made for reserved post, if there are no other objections to the appointment.

10. 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.12003/2017 and others decided on 15/1/2018, 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.

11. In the result, the petition is allowed. The impugned order is hereby quashed and set aside. The second respondent is directed to give approval to the appointment of the petitioner as Shikshan Sevak from the date of his initial appointment.

Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.