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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2896 OF 2019

Miss Patil Smita Sarjerao & anr. ..Petitioners
Vs.
The State of Maharashtra & anr. ..Respondents

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Shri N.V. Bandiwadekar I/b. Ms. Ashwini N. Bandiwadekar for
petitioners.
Shri K.S. Thorat, AGP for respondent Nos. 1 & 2.

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CORAM : M.S.KARNIK, J.

DATE : 3rd APRIL, 2019

P.C. :

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

2. The petitioner No.1 by this Petition under Article
226 and 227 of the Constitution of India, challenges an order
dated 19th January, 2019 passed by the Education Officer
(Secondary), Zilla Parishad, Sangli, refusing to grant approval to
appointment of the petitioner No.1 as Shikshan Sevak.

3. It is the case of the petitioners that one Shri Subhash
R. Kulkarni, who was working as an Assistant Teacher, expired

on 18/1/2012. He was working on the post meant for Open Category. An advertisement therefore came to be issued on 31st January, 2012 for appointment of one post of Assistant Teacher to teach Marathi subject in Open category. Pursuant to the selection process the petitioner No.1 was appointed as a Shikshan Sevak by an appointment order dated 13/2/2012. The petitioner No.1 completed her three years as a Shikshan Sevak and therefore Management submitted a proposal for approval of her appointment. Since the proposal was not being decided by the Management, she approached this Court. Pursuant to the directions of this Court, by the impugned order, the proposal for approval of the appointment of the petitioner No.1 as a Shikshan Sevak came to be rejected.

4. Shri Bandiwadekar, learned Counsel appearing on behalf of the petitioners submitted that the petitioner No.1 was appointed against a vacancy which occurred in respect of open category. Pursuant to an advertisement duly published and the selection process held, the petitioner No.1 came to be appointed. He would submit that it is not the case of the respondent that at

the relevant point of time there were surplus teachers available who could be appointed in the said post. He would further submit that the reasons given in the impugned order are unsustainable in as much as the Education Officer is relying upon the G.R. dated 6/2/2012 and G.R. dated 2/5/2012 which have no application to the petitioner's case as the selection process was started prior to the issuance of the G.R.

5. Shri Thorat, learned AGP on behalf of the Education Officer would submit that the impugned order is based on justifiable reasons. Inviting my attention to Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, learned AGP would submit that no prior permission of the Education Officer was taken before issuing advertisement. He would submit that the G.Rs. relied upon in the impugned order would squarely apply in the present facts. He would moreover submit that the G.R. dated 2/5/2012 clearly banned the appointment of Assistant Teachers till there is 100% absorption of surplus teachers.

6. Heard learned Counsel for the parties. I have gone through the impugned order. There is no dispute that petitioner No.1 was appointed in a vacant post belonging to the Open Category. This was a result of the post falling vacant on account of death of Shri Subhash Kulkarni. The advertisement was issued on 31/1/2012 and petitioner No.1 is duly selected in the selection process so conducted. She has completed her tenure of three years as a Shikshan Sevak. Respondents state that the petitioners have not obtained prior permission of the Education Officer before issuing advertisement. However, in the facts of the present case and upon going through the impugned order, I find that the impugned order is not passed on the ground that as on the date when the advertisement was issued, there were surplus teachers available. Moreover, petitioner No.1 was appointed on 13/2/2012 and has now put in seven years as an Assistant Teacher.

7. Even other grounds mentioned in the impugned order are in respect of the various G.Rs. issued by the State

Government from time to time. I find that the appointment of petitioner No.1 is prior to issuance of G.R. dated 6/2/2012, 2/5/2012 and 24/8/2018 and therefore, they will not have any application to the petitioner's appointment. Even this Court in the case of **Smt. Munoli Rajashri Karabasappa v/s. State of Maharashtra through Secretary & ors. in Writ Petition No.8587 of 2016** has clearly held that where the recruitment process is already commenced prior to G.R. dated 2/5/2012, the ban would not apply.

8. In this view of the matter, the impugned order passed by the Education Officer dated 19/1/2019 is quashed and set aside.

9. The Petition is allowed in terms of prayer Clause (b) with no order as to costs.

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

(M.S.KARNIK, J.)