

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3637 OF 2014

Jay Hanuman Shikshan Samiti,
Hanuman Nagar, Katemanewali,
Kalyan (E), District Thane
through its Chairman/Secretary

.... Petitioner

- Versus -

1. The State of Maharashtra,
through the Secretary,
School Education Department,
Mantralaya, Mumbai-400 032.

2. The Education Officer
(Primary), Zilla Parishad,
Thane.

3. Kalyan Dombivali Municipal
Corporation School Board, Kalyan,
District Thane, through
its Administrative Officer

.... Respondents

Mr. N.V. Bandiwadekar for the Petitioner.
Mr. Vikas M. Mali, Assistant Government Pleader,
for the Respondent-State.

**CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

DATE : FEBRUARY 15, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. **Rule.** Learned AGP waives service on behalf of respondent No.1-State. None present for respondent Nos.2 & 3, though served. By consent, Rule is made returnable forthwith and the writ petition is taken up for hearing and final disposal. Heard.

2. By this petition under Article 226 of the Constitution of India, the following relief is claimed:-

“(b) By a suitable writ, order or direction this Hon'ble Court be pleased to quash and set aside the impugned order dated 3/3/2014 issued by Respondent No.2 and accordingly it be held and declared that the Second Divisions of Std.VI and VII in the Primary School of the Petitioner by name Pawshe Marathi Vidyamandir, Kalyan (E), District Thane, are eligible and entitled to receive 20% grant-in-aid from the year 2010 as per the Government Resolution dated 25/6/2013 issued by the Respondent No.1, with sanction of further stages of grant in subsequent Academic Years and accordingly the Respondents be directed to release the said grant-in-aid.”

3. The argument of Mr. Mali, learned AGP, is that the State and the Education Department are relying upon a Government Resolution of the Education Department dated 25-6-2013. That, as per Clause (2), enables the Government to withdraw or refuse the grant-in-aid. In this case, it is withdrawn because there was a backlog and the roster was not given full effect. As the posts reserved for the Scheduled Tribe/Vimukta Jatis - Nomadic Tribe have not been filled-in in terms of the roster point, the grant was rightly refused.

4. The affidavit in-reply by the Deputy Secretary to Government, School Education and Sports Department, outlines the policy of reservation and why it is introduced and implemented. How it is necessary as well.

5. We do not think that either Mr. Bandiwadekar or anybody else has questioned this policy. We do not think that the Management is averse to implementing the policy of reservation, for it is bound by this policy enunciated by the State and also inserted in the The Maharashtra Employees of Private

Schools (Conditions of Service) Regulation Act, 1977 and The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 framed thereunder. There is also a position indicated and percentage-wise of these reservations.

6. In paras 9 and 12 of this writ petition, the petitioner states as under:-

“(9) The Petitioner states that the impugned order issued by the Respondent No.2 is illegal, bad in law, perverse and passed without due consideration of material on record and without due application of mind. The reason given in the impugned order to refuse grant-in-aid to the Second Divisions of Std. VI and VII, namely backlog of reservation in the School, is illegal and unsustainable. It is wrongly stated in the impugned order that there is backlog of S.T. - 2 in the School, when in fact, there is no such backlog in S.T. category. The Petitioner states that the Respondent No.2 erred in not considering that there are 16 sanctioned posts of teachers in the Primary School of the Petitioner, out of which 12 are filled by appointing candidates belonging to various Backward Classes i.e. S.C. - 1, S.T. - 2, D.T.N.T. - 2 and O.B.C. - 7. Thus, the School has maintained and complied with the requisite reservation of 52%. In fact, as per 52% reservation, it was necessary to appoint 8 teachers from backward categories but in fact the School has appointed 12 teachers and thereby already there are 3 excess teachers from backward category appointed in the School. Therefore, it cannot be said that there is backlog of reservation and for that reason, the Second Divisions of Std. VI and VII cannot be sanctioned the grant-in-aid. It is further pertinent to note that all the said appointments of employees, including the teachers

belonging to various backward classes have been duly approved by the Competent Authority namely the Respondent No.3 School Board and all of them have become permanent in service.

(10) & (11)

(12) The Petitioner states that in the impugned order it is stated that there is backlog of S.T. - 2. However, the said reservation is totally illegal and contrary to law. It can be seen from the Roster referred to hereinabove that for S.T. category, the reservation applied is at 22%, on the basis of which 4 posts are held reserved for that category, and since only 2 teachers from that category are appointed, the backlog is shown of 2 posts. However, under the said Rules and the said Government Resolution, the reservation for S.T. category is only 7%, on the basis of which only one post can be reserved for S.T. category. But 2 teachers from that category are already appointed in the School, which is also mentioned in the aforesaid Roster. Thus, it is clear that by applying wrong and excessive percentage of reservation [22% instead of 7%] it is held that there is backlog of 2 posts in S.T. category and unless the same is cleared, the Second Divisions of Std. VI and VII cannot be sanctioned grant-in-aid. The said reason is therefore, not sustainable and hence it is liable to be set aside. The Petitioner states that for the four sub-categories in the category of D.T.N.T., the reservation prescribed is 11%, on the basis of which two posts are required to be reserved, and 2 teachers are already appointed from that category [VJ-NT]. Hence, for this reason, the grant-in-aid cannot be refused because as stated above the total percentage of reservation has been duly fulfilled in the School.”

Pertinently, the Deputy Secretary in his detailed affidavit does not deal with these paras at all. He has, therefore, not dealt

with, leave alone denied the position that there is no backlog and rather the reservation percentage has been exceeded by giving representation to the backward category members. The school implemented the roster and the said MEPS Rules. To our mind, once this factual submissions are not denied, then, the refusal to release the grant-in-aid to only two sections/divisions of standards VI & VII is totally unjustified. Pertinently, for all of these standards, including standards VI & VII, for one division thereof such grant-in-aid has been released for the additional second division. There is absolutely no justification to withdraw the grant. We do not think that the percentage of reservation or backlog has to be counted like this and division-wise. Hence, the writ petition must succeed. It accordingly succeeds. Rule is made absolute in terms of prayer clause (b). There will be no order as to costs. The grant-in-aid be released as expeditiously as possible and in any event before 31-5-2019. The failure to release it shall be visited with severe consequences, including initiation of civil and criminal action.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)