

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

WRIT PETITION NO.12647 OF 2018

Swarupa Santosh Shelar & Ors.

...Petitioners

vs.

The State of Maharashtra
through the Secretary & Anr.

...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. :

. The challenge in this petition is to the order dated 25/10/2017, passed by the second respondent, refusing to grant approval to the appointment of the petitioner Nos.1 & 2 as Shikshan Sevaks, in the respondent No.4 school, with effect from 15/6/2016.

2. The brief facts are that the petitioners who belongs to the Other Backward Class (OBC) category were appointed against reserved vacancy. The resolution of the school committee dated 3/7/2016 and 11/12/2016 and the copy of the appointment letter issued to the petitioner Nos.1 & 2 on 15/6/2016 is there on record. The fourth respondent sent a proposal for approval of the appointment to the second respondent on 12/10/2017. The second respondent by impugned order dated 25/10/2017 has refused to

grant the 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.

3. I have heard Mr. Bandiwadekar, learned counsel for the petitioner and learned AGP for the respondent Nos.1 and 2. Perused record.

4. Mr. Bandiwadekar, 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 & 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 made for filling up vacancies in English, Mathematics and Science ;
- 3) where the recruitment is made to fulfill the backlog of reserve categories candidates.

5. It is submitted that present case falls under the second category and thus Education Officer was not justified in refusing the grant the approval.

6. Learned AGP has referred to the affidavit in reply filed by Mr. Bhikan Patil, Dy. Education Officer (Secondary), Zilla Parishad Thane. It is contended that as per the roster verified by the B. C. Cell, there was backlog of SC-4, VJ (A)-2 in the petitioner institution and the management was required to fill the backlog as per the roster point. It is contended that however, the management has appointed the petitioner Nos.1 and 2, who belongs to OBC category, which act of the management, is against the roster. It is submitted that the proposal shall be decided in accordance with the Government Resolution dated 24/8/2018 if the management submits a fresh proposal in respect of the petitioners.

7. I have carefully considered the circumstances and the submissions made. A perusal of the appointment order of the petitioners would show that they are holding the Degree of B.Sc. B.Ed. A specific case is made out by the petitioners that they were appointed in the Science / Maths subjects.

8. This Court in the case of **Smt. Munoli Rajashri Karabasappa** (supra) has held that the ban on such recruitment shall not apply where the appointments are made for filling up vacancies in English, Mathematics and Science.

9. It is significant to note that the impugned order does not show that the approval has been rejected on the ground that the appointment is in breach of roster points and thus respondents cannot be allowed to support the impugned order, on the basis of

reasons different than the one given in the order (see the decision in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others AIR 1978 Supreme Court 851**). That apart, the petitioners have filed a rejoinder dated 24/7/2019 enclosing the status of the vacancies as on 31/10/2017 which indeed shows that there were two vacancies in so far as OBC category is concerned (see page 58 of the compilation).

10. Thus, in my considered view, the approval could not have been refused on the ground that certain surplus teachers were yet to be absorbed. In that view of the matter, the petition is allowed. Rule is made absolute in terms of prayer clause (b), with no order as to costs.

(C. V. BHADANG, J.)