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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1564 OF 2018**

Kishor Vijay Behere ..Petitioner
Vs.
The Education Officer (Secondary)
& ors. ..Respondents

**WITH
WRIT PETITION NO. 1566 OF 2018**

Ananda Chudaman Patil ..Petitioner
vs.
The Education Officer (Secondary)
& ors. ..Respondents

**WITH
WRIT PETITION NO. 9282 OF 2018**

Santosh Ashok Kadam ..Petitioner
vs.
The Education Officer (Secondary)
& ors. ..Respondents

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Mr. G.M. Savagave for the petitioners.
Mrs. Rupali Shinde, AGP for State – respondent Nos. 1 to 4 & 7.
Mr. Anilkumar K. Patil for respondent Nos. 5 & 6.

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

DATE : 23rd JANUARY, 2019

P.C. :

These Writ Petitions filed under Article 226 of the Constitution of India, demonstrate as to how for absolutely formal matters, parties like the petitioners and the Managements who employ them have to come to this Court in its writ jurisdiction.

2. These are pure administrative matters and neither some complicated legal issue is involved nor there is any policy of the Government which requires interpretation. It is only a pure administrative issue.

3. The facts of the first Petition itself would disclose as to how the Managements are virtually harassed by the Education Officer of the Zilla Parishad.

4. The petitioner says that he is a citizen of India, domiciled in the State of Maharashtra and permanently residing in Panvel Taluka, District – Raigad.

5. He has a Master's Degree in Commerce. He belongs to OBC category. The sixth respondent conducts a Secondary Resident Army School as well as Junior College at Chikhale, Taluka – Panvel, District – Raigad. There was a vacancy in the post of clerk and some other posts in this Sainik School. The vacancies were for general as well as reserved category posts.

6. On 15th December, 2009, respondent Nos. 5 and 6 addressed a letter to the third respondent seeking his permission to publish an advertisement in local newspaper to fill up these vacant posts.

7. On 30th December, 2009, the Deputy Director of Education, Mumbai Division, Mumbai, by a letter informed the Education Officer (Secondary), Zilla Parishad, Raigad, that he should inform the concerned Institute to take steps so as to fill up the vacant posts.

8. It is not disputed that the Secondary Resident Army School is aided school. It is clear that an advertisement was

published on 18th November, 2014 to fill up the vacant posts. Exhibit 'B' to the Petition is copy of the advertisement.

9. After the petitioner applied pursuant to this advertisement, an Interview Committee duly constituted and comprising even a representative of the Deputy Director interviewed the petitioner. The report of this selection process was forwarded and later on it was endorsed by the Deputy Director of Education. On 9th January, 2015, an appointment order was issued to the petitioner, copy of which is at Exhibit 'D'.

10. As is clear from the procedure prescribed by the Government of Maharashtra and particularly through Directorate of Higher Education, post appointment approval has to be sought from the concerned competent authority so that the petitioner can be held eligible for obtaining pay scales. The pay scales are prescribed for the post, namely, teaching and non teaching. Since the pay scales by law have to be claimed, the joint proposal of the petitioner and the Management came to be forwarded but by the impugned letter, the said proposal has

been returned.

11. Hence, this Petition has been filed seeking a direction to the concerned officials to grant approval.

12. The only contention that was raised is that there was a ban across the State and imposed insofar as recruitment to teaching and non teaching posts. This ban order was in force from 2012. On account of the ban imposed, the recruitment procedure could not have been initiated and, therefore, action in terms of the G.R. dated 12th February, 2015 deserves to be taken.

13. The petitioner and the Management have clarified that such ban was not applicable and secondly, the letter of 12th February, 2015 cannot be given a retrospective effect.

14. What we find from the impugned communication is that the Management forwarded the proposal and when it forwarded the proposal, it specifically stated that the

advertisement was published and in pursuance thereof, applications from eligible candidates were invited. Three Member Selection Committee was constituted and it held interviews. After full compliance with the policies, particularly applicable to Sainik Schools, the process has been completed. It was, therefore, requested to release the pay scales in terms of the Rules prescribed by the Government.

15. The communication from the Government is that because there was a total ban and status quo had to be maintained with regard to recruitment and appointment, hence, the persons who have initiated the process of recruitment and selection have exposed themselves to criminal prosecution.

16. There is absolutely no consideration of any of the factual and legal aspects. Secondly, from the impugned communication itself it is evident that the Education Officer (Secondary), Zilla Parishad, Raigad, did not deem it fit and proper either to issue a notice to the Management or to the petitioners to appear before him. If such notice had been issued

possibly they would have brought the records and satisfied the authority that there is no infirmity or deficiency in the recruitment and selection process.

17. Though this communication of 19th July, 2017 says so, curiously this very Education Officer now files a reply affidavit and he says that letter of Deputy Director of Education dated 30th December, 2009 is not a permission to publish an advertisement. He has contradicted himself by saying that after letter of permission dated 30th December, 2009, the Management published advertisement after near about five years. This delay is fatal.

18. There is another reason assigned now and on oath that the roster was verified and it was pointed out by the Assistant Commissioner, Backward Class category that in the cadre of clerk, Vimukt Jati and Other Backward Class, one surplus clerk in each category is recruited. There was no reservation and that still this was done. He, therefore, sought explanation from the Management.

19. Then it is stated that from the advertisement published by the Management, it is clear that the applications are invited to fill one post of clerk from OBC category when there is already post of same cadre and category that is extra or over and above the sanctioned staff.

20. It is, therefore, mentioned that there is ban on recruitment of non teaching staff to the school and they should not reappoint anybody on non teaching post. It is, therefore, clear that illegal appointment order has been issued.

21. Then it is stated that when the proposal was considered by the office of the Education Officer, the G.R. dated 12th February, 2015 was in force. The next sentence contradicts the first one and says that the petitioner was appointed on 9th January, 2015, whereas this GR is dated 12th February, 2015 and will not apply retrospectively to the case of the petitioner.

22. Thus, this is not the reason any longer to refuse to approve the appointment of the petitioner. The other two

reasons invented while filing affidavit are supposed to be the foundation and basis of the impugned communication.

23. We will not refer to such materials and such details. We find that it will be pointless if this matter is sent back to the Education Officer (Secondary), who has already made up his mind and disclosed it on oath before us. If the matter is sent back to him, it is quite likely that there will be an ego clash. He will take out his frustration and anger on the Management and the petitioner simply because they challenged his action in the competent Court.

24. It is quite likely that an adverse order will be passed and the matter will have to be decided by us again.

25. It is in these circumstances that we request respondent No.3 - Deputy Director of Education to this Writ Petition to examine the Management's proposals seeking approval to the appointments of the petitioner in these three

Petitions. He will consider these proposals afresh. He shall consider them strictly on merits and in accordance with law. The Deputy Director will issue a notice and hold a hearing before him at which both the petitioner and the Management will remain present. They will be allowed to rely upon the records in their possession. Equally, if the Deputy Director has something in his possession and which he feels relevant and genuine and he is likely to use it to the detriment of the parties, he must ensure that he will bring such materials to the notice of the parties before the hearing and give them an opportunity to make their submissions on the contents of any documentary evidence in his possession.

26. The Deputy Director will pass a fresh order assigning reasons, uninfluenced by what the Education Officer has done earlier. This fresh order shall be passed by the Deputy Director within three months from the date of appearance of the parties before him.

27. We direct that the parties shall appear before this Deputy Director on 7th February, 2019, at 10.30 a.m. He will pass the order within the period of three months thereafter.

28. Since the facts of the connected Petitions are identical, the same also stand allowed in the above terms.

29. There shall be no order as to costs.

30. Needless to clarify that the impugned communication is quashed and set aside.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)