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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.184 OF 2017

Nitabai M. Salve	...Petitioner
V/s.	
The State of Maharashtra & Ors.	...Respondents

Mr.Bhushan V. Tayade for the Petitioner.

Mr.V.M. Mali, A.G.P. for the State – Respondent Nos.1 and 2.

Mr.Deepak More for the Respondent No.4.

Mr.Sanjiv Sawant with Mr.Abhishek Deshmukh for the Respondent No.5.

CORAM : B.R. GAVAI &
DAMA SESHADRI NAIDU, JJ.
DATE : 19TH MARCH, 2019.

P.C. :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. The present case depicts sorry state of affairs and total non-application of mind on the part of the respondent no.4.
3. The petitioner who belongs to Scheduled Caste category was appointed in the respondent no.5 primary school under the management of the respondent no.4. After the appointment of the petitioner as Shikshan Sevak on 17th June, 2010, the respondent

management has been sending the proposal to the respondent no.5 for grant of approval to the appointment of the petitioner. It is pertinent to note that initially the respondent no.5 had submitted certain proposal to the respondent no.4 for grant of approval to the appointment of certain teachers. The sanctioned strength of the primary teachers is 19 for aided posts and 4 being unaided posts. The proposal which has submitted by the respondent no.5 to the respondent no.4 for the academic year 2007-2008 came to be rejected by the respondent no.4 on the ground that there is a backlog of the following posts : SC – 1, ST – 1, NT/DNT/VINT – 2 and Open – 1. The last proposal for the academic year 2007-2008 came to be rejected and returned on the ground that the proposal would not be considered unless the backlog is fulfilled.

4. It may be relevant to note the facts from the affidavit sworn in by the respondent no.4 only. According to the respondent no.4, out of four posts recommended for approval by the respondent no.5 viz. Smt.Sakshi S. Kurle, smt.Supriya Anil Bakre, Smt.Vandana Satish Patil and Smt.Lalita Rajaram Ahire, only one person could be granted approval inasmuch as on the post sanctioned belonging to the open category.

5. Learned counsel appearing for the respondent no.4 fairly states that though in the affidavit in reply, it is stated that the

petitioner came to be appointed on 12th June, 2012 against the post available in the SC category, the actual date of appointment is 15th June, 2010. In pursuance to the return of proposal by the respondent no.4 to the respondent no.5 management, again the proposal was sent by the respondent no.5 for grant of approval to the appointment of the petitioner against the post reserved for SC category. The respondent no.4 in the affidavit states that the said proposal was duly considered by the office of the said respondent and the same was turned down by a communication dated 23rd December, 2010.

6. We fail to understand the conduct of the respondent no.4. When an earlier proposal was submitted by the management for grant of approval to the four persons appointed from the open category, the same came to be rejected and turned down only on the ground that only one post from the open category is available and unless the respondent no.5 management makes the appointment from the reserved category in case of which there was a backlog, the proposal could not be considered.

7. When under the direction of the respondent no.4, the respondent no.5 management selected the petitioner who undisputedly belongs to SC category, again for the reason best known to the respondent no.4, he has rejected and turned down. We have to state on record that the respondent no.4 has been acting in

the manner which can be stated to be harassing the poor teachers. When earlier approval is not granted to the teachers by the respondent no.5 school on the ground that there is backlog of various categories and when on the second occasion the proposal was granted to a candidate belonging to the SC category, we see no reason as to why such approval was not considered and granted. It is not the case of the respondent no.4 that the petitioner was not qualified and she did not possess necessary qualification or experience. It appears that the respondent no.4 has committed an error in coming to the conclusion that the petitioner could not be granted approval.

8. We are again constrained to say that the stand taken by the respondent no.4 is totally contrary. We expect an officer of high rank to apply mind before filing an affidavit. At one end, the proposal to the respondent no.4 is rejected on the ground that there is backlog of various categories including SC and the proposal cannot be considered unless the posts are filled from that category and on the other, when the management amends itself and appoints a candidate of SC category, the same is turned down without stating any reason.

9. In that view of the matter, we consider that the petition deserves to be allowed. Since the petitioner's appointment was against a post reserved for SC category and since she belongs to

that category approval shall be granted to the appointment of the petitioner against the post of Shikshan Sevak from 17th June, 2010. The petitioner shall also be granted an approval as the Assistant Teacher on completion of three years period as Shikshan Sevak with effect from 12th June, 2013.

10. The petitioner shall be paid regular salary from the month of April, 2019 and all the arrears in pursuance to the aforesaid directions would be cleared within a period of three months from today.

(DAMA SESHADRI NAIDU, J.)

(B.R. GAVAI, J.)