

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2381/2017

Ku. Shalini D/o Jagannath Hage

..Vs..

Dyandeep Shikshan Prasarak Mandal, Jamod and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.N. Shende, Advocate for the petitioner.
Shri Vishnu Bhide, Advocate for respondent Nos.1 and 2.

CORAM : Z.A. HAQ, J.

DATE : 11.1.2019.

Heard.

The petitioner / employee has challenged the order passed by the School Tribunal by which the appeal filed by her under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is dismissed. According to the petitioner, the management had issued an advertisement inviting candidates for interview on 8th December, 2013 to fill four posts of Assistant Teachers. Out of those four posts, one post was reserved for scheduled caste candidate, one for nomadic tribe candidate, one was available for open candidate and the fourth one was available for open (woman). The petitioner claims that she had appeared for the interview, was selected and given appointment order dated 9th December, 2013. According to the petitioner, she was appointed in the post available for open (woman), however, while sending the proposal seeking approval to her appointment it was

shown that the petitioner was appointed in post reserved for other backward classes which in fact was factually wrong. The Education Officer rejected the proposal seeking approval to the appointment of the petitioner by the communication dated 17th September, 2014. The petitioner claims that she was not permitted to discharge her duties w.e.f. 16th July, 2014 and treating it as “otherwise termination”, the petitioner had filed appeal before the Tribunal which is dismissed by the impugned order.

The submission on behalf of the petitioner is that the Education Officer had committed an error by rejecting the proposal seeking approval to her appointment, overlooking the fact that the petitioner was appointed in the post available for open (woman). Alternate submission is made relying on the provisions of Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the judgment given in the case of *Shakuntala Ganpatsa Shirbhate V/s. Industrial Weaving Co-operative Society and others* reported in **1994 Mh.L.J. 218** that even if it is considered that the post on which the petitioner was appointed was reserved for scheduled tribe candidate, as candidate from scheduled tribe was not available at the time of interviews, the appointment of the petitioner who belongs to other backward class, in that post has to be treated as regular appointment.

Before this Court, learned Advocate for the petitioner as well as the management have admitted that

the post reserved for scheduled tribe candidate was advertised in June, 2014 and a candidate belonging to scheduled tribe is appointed in that post. The petitioner was in employment in the school administered by the respondent / management for about 4 to 5 months. Shri Ravindra Namdeorao Kalpande and Shri Ganesh Shriram Dhurde who were appointed in 2013 in two posts available for open candidates and whose appointments are approved by the Education Officer by the communication dated 17th September, 2014 are not impleaded as party in the proceedings. The person who is appointed in the post reserved for scheduled tribe candidate is not impleaded as party in the proceedings.

In the above facts, it is not possible to consider the grievance of the petitioner and grant relief to her. I find that the Tribunal has rightly appreciated the controversy. I see no reason to interfere with the impugned order. The writ petition is **dismissed**. No costs.

JUDGE