

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Writ Petition No. 8121/2017**

**PETITIONER:-**

Ku. Shaheda Begum Sakhaulla Khan,  
aged about 46 years, Occ. Service,  
R/o. Ansari Ward, near Bade Nal Saheb,  
Bhandara, Tah. & Dist. Bhandara.

**VERSUS**

**RESPONDENTS:**

1. The State of Maharashtra,  
through its Secretary, School Education  
and Sports, Mantralaya, Mumbai – 32.
2. Municipal Council,  
Tah. & Dist. Bhandara through its Chief  
Officer,
3. Maulana Abdul Kalam Azad Nagar,  
Parishad Urdu High School,  
Bhandara through its Head Master, Tah.  
& Dist. Bhandara.
4. The Education Officer (Secondary),  
Zilla Parishad, Bhandara,  
Tah. & Dist. Bhandara.

-----  
Shri A. D. Mohgaonkar, Advocate for petitioner.

Shri N. R. Patil, Assistant Government Pleader for respondent Nos. 1 &  
4.

Shri S. A. Sahu, Advocate h/f Shri M.I. Dhattrak, Advocate for  
respondent Nos. 2 & 3.  
-----

**CORAM: R. K. DESHPANDE AND**  
**VINAY JOSHI, JJ.**

**DATE OF JUDGMENT :- 04.01.2019**

**JUDGMENT (PER R. K. DESHPANDE, J.)**

Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

2. The petitioner was initially appointed as Shikshan Sevak on 09.06.2003 for a period of three years. At that time, the petitioner was possessing the qualifications of B.A. and B.P.Ed. The appointment of the petitioner was continued by another order dated 27.07.2006 for further period of two years which expired on 22.06.2008. The proposal for appointment of the petitioner as Physical Education Teacher was rejected by the Education Officer i.e. Secondary, Zilla Parishad, Bhandara on 28.11.2009 as according to him, there was already one person working as Physical Education Teacher. It was expressed that unless the petitioner acquires D.Ed. Qualification, she cannot get appointment as an Assistant Teacher.

3. The petitioner sought permission to acquire D.Ed. qualification and accordingly, she acquired the same in the month of the October 2013. A proposal was forwarded for grant of approval to the appointment of the petitioner as an Assistant Teacher. However, the same was rejected by impugned order dated 01.09.2017 assigning the reasons as under:-

(i) That, the appointment of the petitioner is in-contravention of the statutory provision of Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

(ii) The post was not advertised as per instructions contained in Government Resolution dated 06.02.2012.

(iii) The policy of reservation contained in Government Resolution dated 07.11.2009 has not been followed.

(iv) There is no record of conducting oral interview of the petitioner.

(v) As per Government Resolution dated 02.05.2012, unless the surplus teachers are fully accommodated, no approval can be granted to the fresh appointment.

4. It is not in dispute that rather it is an admitted position that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rules framed therein do not apply to the teachers in the school run by the Municipal Council – the Local Authority therefore, the reason assigned that the appointment is in-contravention of Section 5(1) of the said Act, does not survive. It is not in dispute that the appointment of the petitioner was made by the District Selection

Committee in accordance with the Recruitment Rules applicable for recruitment of teachers in Municipal Council. There is no dispute raised in respect of it, we are therefore, unable to accept the contention that the appointment of the petitioner was by way of back door entry or was not in the manner prescribed under the Rules.

5. At the time of initial appointment on 09.06.2003, the petitioner was possessing the qualifications of B.A. and B.P.Ed. and was qualified and eligible for being appointed as Physical Training Instructor. The petitioner was appointed as Shikshan Sevak to work as Physical Training Instructor. It is undisputed position that the sanctioned strength of nine teachers working in the school included the post of Physical Training Instructor which the petitioner held and therefore the process for making appointment as per Recruitment Rules was completed. We do not find any justification for the Education Officer to hold that there was no post of Physical Training Instructor existing on the date when the petitioner was appointed, in spite of the fact that one Physical Training Instructor was already working.

6. The petitioner acquired D.Ed. qualification in the month of October 2013 for being appointed as Assistant Teacher. The

earlier proposal was rejected on the ground that unless the petitioner acquires D.Ed. Qualification, no approval can be granted. The petitioner having obtained D.Ed. qualification, the respondent – Education Officer was not justified in rejecting the approval by relying upon the Government Resolution dated 02.05.2012.

7. The Education Officer ought to have seen that the petitioner was fully qualified for being appointed as a Physical Training Instructor on 09.06.2003 and undisputed position being that the permanent vacancy to appoint her existed, the rejection of approval to her appointment as Physical Training Instructor was not justified. At any rate, the Government Resolution dated 02.05.2012 could not have been made applicable to the case of the petitioner. There is nothing on record to show that in appointing the petitioner either as Physical Training Instructor or Assistant Teacher, the policy of reservation was not followed. We therefore, do not find any justification in support of the five grounds stated in the impugned order dated 01.09.2017 to reject the approval to the appointment of the petitioner.

8. In the result, this writ petition is allowed. The order dated 01.09.2017 passed by the Education Officer (Secondary), Zilla Parishad, Bhandara refusing to grant approval to the appointment of

the petitioner as an Assistant Teacher is hereby quashed and set aside.

9. The Education Officer (Secondary), Zilla Parishad, Bhandara is directed to grant approval to the appointment of the petitioner with effect from the date of her acquiring qualification of D.Ed. in the month of October 2013. The petitioner would be entitled to all consequential benefit.

10. Rule is made absolute in the above terms. No order as to costs.

**JUDGE**

**JUDGE**

Gohane