

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 7979 OF 2019
IN
WRIT PETITION NO.1444 OF 2019**

Saraswati Vidya Prasarak Mandal,
Ajansonda(B), Tq.Chakur,
District Latur,
Through its Secretary

APPLICANT

VERSUS

1. Surekha Raosahev Chavan
Age 40 years, Occu.Service,
R/o Ajansonda, Tq.Chakur
District Latur
2. The State of Maharashtra
Through the Secretary,
Education Department,
Mantralaya, Mumbai-32
3. The Education Officer(Secondary)
Zilla Parishad, Latur
4. Dr.Madhusudhan Bangad Vidyalaya
Ajansonda(B), Tq.Chakur
District Latur,
Through it Headmaster

RESPONDENTS

Mr Kishor J. Ghute-Patil, Advocate for the applicant;
Mr S.S. Dande, A.G.P. for respondent Nos. 2 and 3;
Mr G.R.Syed, Advocate h/f Mr M.G.Biradar, Advocate for
petitioner in W.P.;
Mr H.B. Nandagawale, Advocate for respondent No.4;
Mr Ganesh Gadhe, Advocate for intervenor;

**CORAM : PRASANNA B. VARALE &
S. M. GAVHANE, JJ.
DATED : 16TH JANUARY, 2020**

ORAL ORDER:

Heard Mr Ghute-Patil, learned Counsel appearing for the applicant at length.

2. Learned Counsel for the applicant firstly submitted that while disposing of the Writ Petition No. 1444 of 2019, the Division Bench of this Court on the submission advanced on behalf of the petitioner thought it fit to dispose of the petition at the admission stage.

3. Mr Ghute-Patil, learned Counsel for the applicant further submitted that a submission was advanced before this Court in respect of availability of the posts- one from open category and one from Scheduled Tribes category and it was further submitted that the petitioner who is candidate of open category was appointed by following due procedure. It was also submitted before this Court that the proposal for grant

of approval was submitted to the Education Officer in the year 2013 and the same was pending for considerable length of period and then by placing reliance on the judgement of this Court, it was submitted that the rejection order is unsustainable.

4. Mr Patil submitted that as the respondent No.3 – Management had no opportunity to submit before the Courts the relevant and material facts and to counter the statements which were contrary to the record, the petition was disposed of.

5. Mr Ghute-Patil, learned Counsel submitted that the Education Officer(Secondary), Zilla Parishad, Latur by communication dated 12th July, 2013, in response to the permission sought for to publish the advertisement subsequently informed the Headmaster of Dr. Madhusudan Bangad Vidyalaya, Ajansonda(B), Tq.Chakur, District Latur, that permission is granted to fill up the vacancies against four posts - one belonging to Scheduled

Tribes category candidate, one belonging to VJNT/SBC and two belonging to OBC.

6. It is further submission of Mr Ghute-Patil that by giving a go by to this communication of Education Officer dated 12th July, 2013, a mischief is played with publishing the advertisement. Learned Counsel for the petitioner invited our attention to the copy of the advertisement placed on record in Writ Petition No. 1444 of 2019 at Exhibit-A (Page-14). Perusal of this document shows that the advertisement was published to fill up two posts namely; Assistant Teacher and Shikshan Sevak from Open category and Scheduled Tribes Category, respectively.

7. It is a submission of the learned Counsel for the petitioner that when the Education Officer never permitted to publish the advertisement to fill up post from open category; calling applications from open category itself was unsustainable. In support of these

contentions, Mr Patil, learned Counsel for the petitioner also referred to the copy of the judgment and order passed by the learned Single Judge of this Court in Writ Petition No. 6311 of 2016 placed on record in the Writ Petition No. 1444 of 2019 at Exhibit-F. Our attention was invited to paragraph No. 13 and it may be useful to reproduce the observations of the learned Single Judge and the same reads :-

“13. . . . Apparently from the record, there was no permission granted by the Education Officer to the management to fill in any post of Shikshan Sevak from the open category.”

8. On the backdrop of these facts, the learned Single Judge further observed in paragraph No. 14 that the respondent No.5, therefore, could not have been appointed, much less in place of the petitioner.

9. Respondent No.5 in Writ Petition No. 6311 of 2016 is Surekha Raosaheb Chavan and is the petitioner in Writ Petition No. 1444 of 2019. Though in our order dated 7th February, 2019, a reference is made to Writ Petition No. 6311 of 2016, the submission advanced in respect of Writ Petition was only on the count of, displeasure expressed by the learned Single Judge of this Court to the order of the Education Officer being cryptic and without application of mind.

10. This being the fact, we find considerable merit in the submissions of Mr Ghute- Patil, learned Counsel for the applicant that necessary facts were not placed before this Court and though the order of learned Single Judge was referred to in our order, attention of this Court was not invited to the material observations of the Single Judge in respect of the petitioner in Writ Petition No. 1444 of 2019, who was respondent No.5 before the single Judge.

11. Considering these facts, we are of the opinion that the order passed by this Court in Writ Petition No. 1444 of 2019 needs to be recalled and the claim of the petitioner in Writ Petition No. 1444 of 2019 is required to be assessed afresh.

12. Accordingly, order passed by this Court dated 7th February, 2019, in Writ Petition No. 1444 of 2019 is recalled and the Writ Petition is restored to the files for hearing afresh.

13. As the parties to Writ Petition No. 1444 of 2019 are being represented through Counsel and are present before this Court today, we see no reason to issue any further notice to the respondents. Writ Petition No. 1444 of 2019 be posed for hearing afresh on 14th February, 2020 at 2.30 p.m.

[S. M. GAVHANE, J.]

[PRASANNA B. VARALE, J.]