

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

WRIT PETITION NO. 8633 OF 2018

CHANDAN S/O RAMDAS KOLHE

...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr V.S. Panpatte, Advocate for Petitioner
Mr S.G. Sangle, A.G.P. for Respondent No. 1

CORAM : PRASANNA B. VARALE

AND

ANIL S. KILOR, JJ.

DATED : 8th JANUARY , 2020.

PER COURT :

1. Heard Mr Panpatte, the learned Counsel appearing for the petitioner.

2. The petitioner challenges the order dated 17th February, 2017, whereby the proposal for approval of the post of petitioner as Shikshan Sevak is rejected. The learned Counsel Mr Panpatte invited our attention to the documents placed on record to submit that the petitioner is a candidate belonging to Other Backward Class category and was initially appointed in the year 2014 as to fill up leave vacancy. Mr Panpatte then

by inviting our attention to a communication forwarded to the Education Officer through Head Master, Jay Hind Vidyalaya, Kadgaon, Tq. and Dist. Jalgaon dated 01.06.2015 submitted that as there was a need of a teacher on account of retirement of one Mr R.G.Patil, permission was sought for from the Education Officer to publish advertisement after waiting for considerable period. When there was no reply from Education Officer, advertisement was published in the local newspaper on 19.06.2015. The petitioner was possessing requisite qualifications and the claim of the petitioner was assessed along with other candidates and the petitioner being found suitable candidate, petitioner was appointed. The copy of appointment order was also placed on record. Learned Counsel Mr Panpatte then submitted that there was continuous correspondence to the Education Officer, seeking approval to the appointment of the petitioner by way of the letters and reminders. Learned Counsel Mr Panpatte then submitted that on a reminder submitted to the Education Officer dated 13.08.2016, the Education Officer (Secondary), by order dated 17th February, 2017 on the solitary ground that the institute failed to absorb the surplus teachers rejected the proposal for approval.

3. The learned Counsel Mr Panpatte then invited our attention to the Judgment of this Court, and more particularly, the Judgment of Division Bench in Writ Petition No. 2024/2017 dated 23rd February, 2018. Perusal of the copy of Judgment in the matter of Shirur Shikshan Prasarak Mandal, Ghodnadi, Dist. Pune Vs State of Maharashtra and another dated 23rd February, 2018 shows that reference is made to the decision of Division Bench in Writ Petition No. 8587/2016. Mr Panpatte then submitted that petitioner being a candidate of Other Backward Class category and was appointed from the category, he would fall in category No. 3 as carved out in the Judgment and order of the Division Bench in Writ Petition No. 8587/2016. Thus, the submission of the learned Counsel for the petitioner that the order passed by the Education Officer is clearly unsustainable.

4. Mr Sangle, the learned Assistant Government Pleader made an attempt to oppose the petition by submitting before this Court that the petitioner was appointed in ban period. Mr Sangle also referred to the affidavit-in-reply filed on behalf of Deputy Education Officer (Secondary), Zilla Parishad, Jalgaon in support of his submissions. On perusal of the

material placed on record, we find considerable merit in submission of learned Counsel for the petitioner. Mr Panpatte was justified in making the submissions before this Court that the petitioner would fall in category (C), carved out as per the Judgment and order of the Division Bench in Writ Petition No. 8587/2016.

5. Though the learned Assistant Government Pleader opposed the petition in the affidavit-in-reply, affidavit-in-reply is silent on the aspect as to whether any communication was forwarded to respondent No. 3 so as to or respondent No. 4 – Head Master with an intimation of availability of the surplus teacher and as there is no such material placed on record. a mechanical insistence of the Education Officer in rejecting the proposal is clearly untenable and unsustainable. Though the learned Assistant Government Pleader made an attempt to submit that the petitioner was appointed in ban period, interestingly, this ground is not a ground of rejection in the rejection order and this is only a ground raised as an additional ground in the affidavit-in-reply.

6. In view of the settled position of law, respondents cannot agitate some additional grounds which is not the ground in the

rejection order to oppose the claim of the petitioner.

7. Considering all these facts, we are of the clear opinion that the learned Counsel Mr Panpatte made out a case for the petitioner. Resultantly, the petition is allowed in terms of prayer clauses (B) and (C) and disposed of accordingly.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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