

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

48 WRIT PETITION NO.12444 OF 2019

SANTOSH SANDIPAN WARWATKAR  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...  
Advocate for Petitioners : Dr. Tawshikar Swapnil D.  
AGP for Respondents State: Mr A R Kale  
Advocate for Respondent No.4 : Mr. G.K. Chinchole h/for Mr. Sunil M  
Vibhute  
Advocate for Respondent No.6 : Mr. Vivek V Bhavthankar

CORAM : S. V. GANGAPURWALA &  
SHRIKANT D. KULKARNI, JJ.

DATE : 13<sup>th</sup> February, 2020

**ORDER:**

1. This is the second round of litigation for the petitioner.
  
2. Pursuant to advertisement, the petitioner was appointed as teacher for the subject Creche and Pre-School Management after undergoing selection process under order dated 23.01.2014. The authority communicated the petitioner that the petitioner does not possess qualification for the said post so also backlog of VJ-A also exists and petitioner is from SBC category. The petitioner filed writ petition bearing No. 4710/2016, in which this court passed following order, on 4<sup>th</sup> July, 2019,

“2. The respondents shall consider the petitioner as having possessed the qualification as prescribed in the advertisement and consider the proposal for approval on its own merits. The respondents certainly shall consider as to whether the petitioner as a candidate of S.B.C. category was eligible to be appointed on the post meant for VJ.(A) and thereafter shall consider the said proposal for approval. The respondents shall also consider the change in qualification and the policy as to whether the previous staff having no requisite qualification

was to be absorbed or not and shall apply the same to the petitioner. The respondents shall take decision in three months. In case, the respondents consider to grant approval to the appointment of the petitioner, then the petitioner shall not be entitled for any back wages however his services can be considered for continuity and if the approval is granted the petitioner can be absorbed on the post on which the other candidates appointed on the post of Creche Pre-School Management are absorbed. In that case the salary would be paid to the petitioner from the date he is absorbed on the post available. “

3. The proposal for approval is again rejected on the ground that petitioner does not possess requisite qualification and post was reserved for VJ(A) category and the petitioner belongs to S.B.C. category. The petitioner is not absorbed on the ground that his appointment was not approved.

4. As observed above in the earlier writ petition bearing No.4710/216, we had held that the petitioner possess necessary qualification. The petitioner has placed on record copy of the roster certifying that post of Creche and Pre School Management teacher can be filled in from VJ(A)/S.B.C. alternatively. Candidate from V.J.(A) category is not available. The petitioner belongs to S.B.C. category. We do not find any impropriety in the same. Moreover, the Assistant Director (Vocational Training has communicated the school that the post of full time Creche and Pre School Management teacher can be filled from the candidate belonging to VJ(A)/S.B.C. The same is at page No.22 of the petition.

5. In the light of that it would not be open for the respondents now

to contend that the petitioner does not belong to VJ(A) category and and that as he belongs to SBC category his services cannot be approved. The petitioner possesses necessary qualification and his appointment is also for the post which could have been filled from the candidates belonging to S.B.C.

6. In light of above, the impugned order is quashed and set aside.

7. The respondent authority shall grant approval to the appointment of the petitioner as Teacher for the post of Creche and Pre School Management Teacher. The approval shall be granted within six weeks.

8. Upon the approval being granted, further steps be taken in accordance with law.

9. Writ petition accordingly disposed of. No costs.

**(SHRIKANT D. KULKARNI, J.)**

**(S.V.GANGAPURWALA, J.)**

JPC