

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4101 OF 2019

- | | | |
|----|----------------------------|--------------------|
| 1] | Miraj Vidya Samiti |] |
| | A/P Miraj, Dist. Sangli, |] |
| | Through its Chairman |] |
| | |] |
| 2] | Mrs. Sunita Anil Mali |] |
| | Aged 36 Yrs, Occ. Service |] |
| | R/at Near Bethestha School |] |
| | Agarwal Apartment, |] |
| | Tal. Miraj, Dist. Sangli |].... Petitioners. |

Versus

- | | | |
|----|------------------------------|---------------------|
| 1] | The State of Maharashtra, |] |
| | Through the Secretary, |] |
| | School Education Department, |] |
| | Mantralaya, Mumbai – 400 032 |] |
| | |] |
| 2] | The Education Officer, |] |
| | (Secondary), Zilla Parishad, |] |
| | Sangli. |]..... Respondents. |

Mr. N V Bandiwadekar for the Petitioners.

Mr. S B Kalel, AGP for the Respondents/State.

CORAM : S. S. SHINDE,

V. G. BISHT, JJ

Reserved on : 06th March 2020

Pronounced on : 16th March 2020

JUDGMENT :- (PER S S SHINDE, J)

1 Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties heard finally.

2 By this writ petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners takes exception to the order dated 29/11/2018 issued by Respondent No.2 – Education Officer, Zilla Parishad, Sangli refusing approval to appointment of Petitioner No.2 as Shikshan Sevak in the aided Secondary School of Petitioner No.1. The Petitioners pray that Respondent No.2 may be directed to grant approval as Shikshan Sevak for 3 years w.e.f. 15.6.2017 and to release the grant-in-aid for payment of monthly honorarium from the said date of appointment, together with arrears.

3 The facts leading to filing of this Writ Petition can in brief be stated thus :-

Petitioner No.2 belongs to Hindu Mali Caste (OBC Category) and her qualification is MA (Marathi) and B.Ed. (Marathi/Geography). Petitioner No.1 is an Educational Institution. It is the case of the Petitioners that as One Shri Vasantrao Bhanudas Salunkhe, who was working in Petitioner No.1 School, retired from 30/06/2016, one post of teacher became vacant and as per the roster of the management, there was backlog in OBC category. Therefore, Petitioner No.1 published advertisement in newspaper “Daily Pratidhwani” dated 15/05/2016 and invited application for the said post of Shikshan Sevak, B.A. B.Ed. (Marathi). Petitioner No.2 being eligible and qualified made an application, appeared for interview and came to be appointed as Shikshan Sevak from OBC category on probation for 3 years i.e. 01/07/2016 to

30/06/2019. Thereafter a proposal was submitted to Respondent No.2 seeking approval to the said appointment, however, Respondent No.2 declined to accept the said proposal on the ground that the appointment has been made after the ban was imposed under GR dated 02/05/2012. However, Petitioner No.1 submitted before Respondent No.2 that the appointment has been made in a reserved vacant post meant for other backward category so as to clear backlog of said category and therefore ban under GR dated 02/05/2012 would not apply to the said appointment. Ultimately Respondent No.2 accepted the proposal. However, thereafter by impugned order dated 29/11/2018 rejected the proposal and refused to grant approval to the appointment of Respondent No.2 on the ground that by GR dated 02/05/2012 a ban was imposed on the recruitment of the teachers and non-teaching employees. Hence this Petition.

4 The learned counsel for the Petitioners submits that Petitioner No.2 is from OBC reserved category and her appointment as Shikshan Sevak in Petitioner No.1 School has been made in a vacant post to clear the backlog of reservation by appointing candidate from OBC category. He further submits that the Petitioner No.2 being qualified for the said post the approval to her appointment could not have been rejected on the ground that there was ban on recruitment under GR dated 02/05/2012. He also submits that if the appointment is made in a reserved vacancy to clear the backlog of reservation, the approval to such appointment cannot be refused on the ground of the said

ban imposed under GR dated 02/05/2012. He invites attention of this Court to the judgment of the Division Bench (B R Gavai and Riyaz I Chagla, JJ) dated 10/07/2017 in the case of Smt. Munoli Rajashri Karabasappa v/s State of Maharashtra Thru Secretary & ors in a group of Writ Petition No.8587 of 2016 and ors and submits that by the said judgment the Division Bench held that when the appointment is made in a reserved vacancy, the ban on new recruitments in private schools imposed under GR dated 02/05/2012 would not apply. The learned counsel for the Petitioners also relied upon the judgment of the Division Bench (Shantanu S Kemkar & Prakash D Naik, JJ) dated 09/03/2017 in group of Writ Petition No.10580 of 2015 and ors in the matter of Sou. Revati Kusha Wagh & Anr v/s. The State of Maharashtra and submitted that the ban imposed by the GR dated 03/05/2012 would not apply to the appointment of Petitioner No.2 which was made from reserved category (OBC). He therefore submits that the Petition may be allowed.

5 On the other hand, the learned AGP vehemently opposes the Petition. He submits that Petitioner No.1 was aware that the ban is imposed under GR dated 02/05/2012 with a view to accommodate surplus teachers. He submits that if the Petition is allowed, the State would have to pay the salary of teachers who are surplus like Petitioner who is appointed in contravention of GR dated 02/05/2012. The learned AGP relying upon the affidavit in reply of Mahesh Jagannath Chothe – the Education Officer (Secondary) Zilla Parishad,

Sangli and the contents of the impugned order, submits that the Petition may be rejected.

6 We have given careful consideration to the submissions advanced by the learned counsel for the parties. With their able assistance perused the pleadings in the Petition and annexures thereof.

7 In the present case, the fact that Petitioner No.2 is appointed as Shikshan Sevak from 01/07/2016 in OBC category post is not in dispute. It is required to be noted that in the impugned order the Education Officer has placed reliance on GR dated 02/05/2012.

8 The Division Bench of this Court in paragraphs 4 to 7 in the case of Smt. Munoli Rajashri Karabasappa (supra) has held thus :-

4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects of English, Maths and Science are concerned.
5. The Division Bench of this Court in the cases of Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr. 1 has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfill the backlog of backward class candidates.

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates. the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.
7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates.

9 The Division Bench of this Court in the case of Sou. Revati Kush Wagh (supra), on relying upon the judgment of another Division Bench of this Court in Ashok Nilkanth Dhale v/s. State of Maharashtra and ors.¹ has dealt with the similar issue involved in this Petition. The Division Bench in paragraphs 9 to 12 of Nilkanth Dhale's case (supra) has held thus :-

- “9 We have given careful consideration to the submissions advanced by the learned Counsel appearing for the petitioner, learned AGP for respondent nos.1 and 2 -

¹ 2016(5) Mh.LJ 742

State, the learned Counsel appearing for respondent no.3 and the learned Counsel appearing for respondent nos.4 and 5. With their able assistance, perused the pleadings in the petition and annexures thereof. Clauses 1 and 2 of the Government Resolution dated 13.04.2011 issued by the General Administration Department, Government of Maharashtra, reads thus :-

"१) गट-अ व गट-ब संवगातील पदामधील मागासवर्गीयाचा अनुशेष भरण्याची वि शेष मोहीम सुरु करण्यात यावी.

२) गट-क व गट-ड संवगातील पदामधील मागासवर्गीयाचा अनुशेष भरण्याची पदभरतीची प्रक्रिया सुरु करण्याकिरता वित्त विभागाच्या दिनांक २९.११.२०१० च्या शासन निर्णयाच्या आधीन राहून वि शेष मोहीम करण्यात यावी."

Thereafter, by issuing another Government Resolution dated 21.08.2013, time to appoint the candidates from the reserved category, so as to fill in the backlog, has been extended till 31.03.2013.

- 10 In the present case, the petitioner is appointed as Teacher on 21.08.2013. There is no contest on the part of the respondents to the statement made in the petition that the petitioner belongs to NT-C category. Admittedly, the posts of Teachers are reserved for the said category.
- 11 In the impugned communication, the Education Officer placed reliance on the Government Resolution dated 02.05.2012 issued by the School Education Department, Government of Maharashtra. Prior to issuance of the said Government Resolution, the General Administration Department, Government of Maharashtra has issued Government Resolution on 13.04.2011 and as a special case, allowed the institutions to fill-up the posts reserved for the backward category and therefore, the ban imposed by the Government Resolution dated 02.05.2012 would not apply to the present case since the petitioner's appointment was from the NT-C reserved category.

12 In that view of the matter, the impugned communication dated 22.02.2016 issued by respondent no.3 - The Education Officer (Primary), Zilla Parishad, Latur is quashed and set aside. Respondent no.3 is directed to consider the 9 15-wp11535.odt proposal for appointment of the petitioner as Teacher afresh without raising the same reasons which are mentioned in the impugned communication, as expeditiously as possible, however within a period of four weeks from today, and communicate the decision to respondent nos.4 and 5.”

10 In view of the aforesaid pronouncements of the Division Benches of this Court the impugned order dated 29/11/2018 issued by Respondent No. 2 – Education officer (Secondary), Zilla Parishad, Sangli is quashed and set aside. Respondent No.2 is directed to consider the proposal for appointment of Petitioner as Shikshan Sevak afresh without raising the same reasons which are mentioned in the impugned order as expeditiously as possible and preferably within a period of four months from today and communicate the said decision to the Petitioner No.1.

11 The Writ Petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[V. G. BISHT, J]

[S. S. SHINDE , J]