

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4103 OF 2019

- | | | |
|----|--------------------------------|---------------------|
| 1] | Ms. Bhavna Kisan Uradya |] |
| | Aged 29 Yrs. Occ. Service, |] |
| | A/p Narpd, Tal. Dahanu |] |
| | Dist. Palghar – 401601 |] |
| | |] |
| 2] | Sneh Vardhak Mandal |] |
| | Narpad, Tal. Dahanu, |] |
| | Dist. Palghar – 401601 |] |
| | Through its Chairman/Secretary |]..... Petitioners. |

Versus

- | | | |
|----|------------------------------|---------------------|
| 1] | The State of Maharashtra, |] |
| | Through the Secretary, |] |
| | School Education Department, |] |
| | Mantralaya, Mumbai – 400 032 |] |
| | |] |
| 2] | The Education Officer, |] |
| | (Secondary), Zilla Parishad, |] |
| | Thane. |] |
| | |] |
| 3] | The Education Officer, |] |
| | (Secondary), Zilla Parishad, |] |
| | Palghar. |]..... 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 This writ petition is filed under Article 226 of the Constitution of India seeking direction to Respondent No.3 to grant approval to the appointment of Petitioner 1 as Shikshan Sevak in the aided Secondary School of Petitioner No.2 Management and to release grant-in-aid for payment of monthly honorarium for 3 years.

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

Petitioner No.1 belongs to Hindu Varli Caste (S.T. Category). The caste claim of Petitioner No.1 is held valid by Caste Certificate Scrutiny Committee, Konkan Division, Thane vide Certificate of Validity dated 24/04/2007. Her qualification is HSC D.Ed and B.A. Petitioner No.2 is an Educational Institution. It is the case of the Petitioners that as One Shri S D Chaudhari, who was working in Petitioner No.2 Institution, retired from 30/04/2012, one post of teacher became vacant, and as per the roster of the school, there was backlog in ST category. Therefore, Petitioner No.2 published advertisement in newspaper "Daily Sakal" dated 04/07/2012, and invited application inter alia for the said post of Shikshan Sevak, HSC D.Ed..

Petitioner No.1 being eligible and qualified, made an application, appeared for interview and came to be appointed as Shikshan Sevak from ST category on probation for 3 years i.e. 01/08/2012 to 31/07/2015. 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 by following selection procedure and more particularly in the reserved vacant post meant for ST category so as to clear backlog of said category. Ultimately Respondent No.2 accepted the proposal. It is the case of the petitioner that from 01/08/2014 Thane District has been bifurcated into two District i.e. Thane District and Palghar District, and since the school of Petitioner No.2 is situated in Dahanu Taluka which is now included in Palghar District, the competent authority would be Respondent No.3 i.e. Education Officer (Secondary), Palghar. Thereafter the file of the Petitioner No.1 was transferred to Zilla Parishad, Palghar. A request was then made to Respondent No.3 to consider the said proposal and grant the approval. By letter dated 29.11.2018 Petitioner No.2 informed Respondent No.3 that since the proposal for approval to the appointment of Petitioner No.1 is pending with Respondent No.3, the surplus teacher deputed by Respondent No.3 cannot be absorbed. Again by letters dated 06/12/2018 and 10/12/2018 Respondent No.3 was requested to grant the approval. However, till date

Respondent No.3 did not take any decision on the said proposal. Hence this Petition.

4 The learned counsel for the Petitioners submits that Petitioner No.1 is from ST reserved category and her appointment as Shikshan Sevak in Petitioner No.2 institution has been made in a vacant post to clear the backlog of reservation by appointing candidate from ST category by following the selection procedure. He further submits that the post in which Petitioner No.1 is working is being treated as a vacant post and Petitioner No.1 being qualified for the said post, the approval to her appointment could not have been kept pending by Respondent No.3 without any decision. 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 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.1 is appointed as Shikshan Sevak from 24/07/2012 in ST category post is not in dispute. Admittedly the said post of teacher is reserved for the ST category. According to Respondent No.2 since the appointment of Petitioner No.1 was made after imposition of the said ban under GR dated 02/05/2012, the said appointment was illegal to which approval cannot be granted. It is required to be noted that after bifurcation of Thane District, the file of Petitioner No.1 has been

transferred to Respondent No.3 – Zilla Parishad, Palghar District, which is the competent authority and the same is kept pending by Respondent No.3 without any decision.

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 - 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 सुर करण्यात यावी.

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

¹ 2016(5) Mh.LJ 742

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 that view of the matter, Respondent No.3 – Education Officer, (Secondary), Zilla Parishad, Palghar is directed to consider the proposal to

grant approval to the appointment of Petitioner No.1 as a Shikshan Sevak as expeditiously as possible and preferably within a period of four months from today and communicate the said decision to the Petitioner No.2.

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]

Laxmikant
G.
Chandan

Digitally signed
by Laxmikant
G. Chandan
Date:
2020.03.17
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