

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.160 OF 2020

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | Smt. Vaishali Raoso Ghadage, |) | |
| | Age 41 years, Occ. Service |) | |
| | R/o. Pimpri Khurd, Post Kotholi, |) | |
| | Tal. Atpadi, Dist. Sangali |) | |
| 2. | Atpadi Education Society, |) | |
| | A/P/T Atpadi, Dist. Sangli, |) | |
| | Through its Joint 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, Sangli. |) | ...Respondents |

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Mr. N. V. Bandiwadekar i/b. Ms. A.N. Bandiwadekar, Advocate
for Petitioners.

Mr. N.C. Walimbe, A.G.P. for Respondent Nos. 1 & 2.

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CORAM : MILIND N. JADHAV, J.
DATE : 25th February, 2020.

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. By the present petition filed under the provisions of Article 226 and 227 of the Constitution of India, the petitioners have sought the following prayers :-

"a) Rule Nisi be issued and records and proceedings be called for.

b) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 23.7.2018 (EXHIBIT-G) issued by the Respondent No.2, and accordingly the Respondent No.2 may be directed to grant approval to the appointment of the Petitioner No.1 as Assistant Teacher w.e.f. 31.7.2017 in the un-aided Secondary School of the Petitioner No.2, with all consequential service benefits.

c) Pending the hearing and final disposal of this petition, the Respondent No.2 may be directed to grant current approval to the appointment of the Petitioner No.1 as Assistant Teacher in the Secondary School of the Petitioner No.2, with all consequential service benefits.

d) Costs of this Petitioner be provided for.

e) Any other order in the interest of justice and kindness be passed as and when necessary."

3. The petitioner No.1 came to be appointed as an

Assistant Teacher w.e.f. 31.07.2017 in the pay scale of Rs.9,300-34,800/- G.P. Rs.4,300/- on the un-aided post of Assistant Teacher in the school run by the petitioner No.2 / Trust. The petitioner No.2 is a Trust registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860 and presently runs 29 schools including the school in which the petitioner No.1 came to be appointed. The said school does not receive any grant-in-aid from the Education Department and therefore is an un-aided school, as such the posts of teachers in the said un-aided school are sanctioned on un-aided basis. It is the case of the petitioners that, one Shri Tatoba Appa Narale (B.A., B.Ed.) was working as a full time Assistant Teacher in the said school on un-aided basis. The appointment of Shri. Tatoba Appa Narale was granted approval by respondent No.2 / Education Officer (Secondary), Zilla Parishad, Sangli. He was transferred from the said un-aided school to Dighanchi Girls High School, Dighanchi, Dist. Sangli (un-aided school) belonging to petitioner No.2 / Trust on 12.07.2017. In view of the same, the post of the teacher sanctioned on un-aided basis in the said school became vacant.

4. It is the petitioners' case that, as per the roster of the said school, there was deficit / backlog of appointment of teachers in the open category. According to the petitioners there were 11 posts for open category which were vacant / unfilled. Therefore, the petitioner No.2 / Trust decided to fill up the aforesaid un-aided vacancy from open category. The petitioner No.2 / Trust published a public advertisement in the daily newspaper for inviting applications for the aforesaid post on un-aided basis. In response to the advertisement the petitioner No.1 applied for the post of Assistant Teacher. The petitioner No.2 / Trust followed the due process of law, conducted interviews of the selected candidates and in the process petitioner No.1 was selected and recommended for appointment. The Co-ordination Committee of the petitioner No.2 / Trust passed a resolution dated 10.06.2017 to appoint the petitioner No.1 as Assistant Teacher on the said un-aided post which had become vacant due to transfer of Shri. Tatoba Appa Narale to another school.

5. Thereafter, the Head Master of the said school

prepared the proposal for seeking approval of the aforesaid appointment of petitioner No.1 and sent the same to the respondent No.2 / Education Officer. The respondent No.2 / Education Officer declined to accept the said proposal on the ground that the appointment of the petitioner No.1 was illegal and in violation of Government Resolution dated 02.05.2012 issued by the State Government imposing a ban on new recruitment in private schools. There is no dispute that the said proposal was complete in all its respect.

6. The respondent No.2 / Education Officer by his order dated 23.07.2018 refused to grant of approval to the appointment of the petitioner No.1 on four specific grounds viz; (i) the petitioners had not provided the details of vacancies; (ii) the petitioners had to fill in backlog of vacancies of the reserved categories before making appointment in the open category; (iii) certain cases of appointments pertaining to the petitioner No.2 / Trust were subjudice in the Court of law and (iv) petitioners had not annexed the roster i.e. the copy of the order of sanctioned Staff Schedule (Sancha Manyata) for the year 2001 - 2002 in

respect of baseline posts and therefore appointment of the petitioner No.1 was contrary to Government Resolution / Circular or Rule and in breach thereof. Being aggrieved the petitioners have challenge the validity and propriety of the order of rejection of approval dated 23.07.2018 in the present petition.

7. Shri. Bandiwadekar, learned counsel appearing on behalf of the petitioners submitted that, the reasons given by the respondent No.2 / Education Officer in his order dated 23.07.2018 are *prima-facie* unsustainable as respondent No.2 / Education Officer has not considered the proposal forwarded by petitioner No.2 / Trust in its entirety and has selectively rejected the proposal on vague and insufficient grounds. He submitted that the petitioners had categorically forwarded in the proposal submitted to the respondent No.2 / Education Officer in the format prescribed under the Government Resolution dated 06.02.2012 and stated that the post against which the petitioner No.1 came to be appointed in the un-aided school had become vacant due to the vacancy of the teacher working in that post namely Shri Tatoba Appa Narale

being transferred to the aided school of the petitioner No.2 / Trust on 12.07.2017. Therefore, when the details of such vacancy which had arisen were specifically submitted to the respondent No.2 / Education Officer, the rejection of approval on this ground was completely unsustainable, arbitrary and illegal.

8. Shri. Bandiwadekar submitted that the reason for rejecting the proposal that even though there was backlog of reservation in the school run by the petitioner No.2 / Trust was unsustainable because at the same time there was deficit / backlog also in the open category. According to the respondent No.2 / Education Officer the reason for rejection on this ground was because of the roster and the petitioner No.2 / Trust ought to have filled up the backlog of reservation before appointing the petitioner / filling up the post in the open category. He submitted that since the appointment of the petitioner No.1 was made in a deficit post of the open category, there was no breach of any reservation policy or filling up of any reserved post which could lead to the conclusion that the appointment of the petitioner was made

against reserved category. Therefore, the second reason given by the respondent No.2 / Education Officer was also completely unsustainable in law for rejecting the proposal of appointment of petitioner No.1.

9. Shri. Bandiwadekar submitted that the third reason given by the respondent No.2 / Education Officer in the impugned order stated that due to certain proceedings pending before the Court of law and the same being subjudice the petitioner's appointment could not be approved. He submitted that, there were no proceedings whatsoever pending before any Court of law and no matter was subjudice before any Court of law.

10. Shri. Walimbe, learned A.G.P. appearing on behalf of respondent Nos.1 and 2 also fairly submitted that there were no proceedings pending before any Court of law with respect to the appointment of petitioner No.1. He fairly submitted that Shri Tatoba Appa Narale in whose place, the petitioner No.1 came to be appointed had filed no proceedings before any Court of law and therefore it was not

possible to justify this reason for rejecting the approval of appointment of petitioner No.1 in the impugned order.

11. Shri. Bandiwadekar submitted that the fourth reason given by the respondent No.2 / Education Officer while rejecting the proposal for approval of appointment was that the petitioner No.2 / Trust should have annexed along with the proposal the copy of sanctioned Staff Schedule (Sancha Manyata) for the year 2001 - 2002 in respect of baseline posts. He submitted that Shri Tatoba Appa Narale was appointed on the post of teacher and the respondent No.2 / Education Officer had granted approval to his appointment. Thereafter, Shri. Tatoba Appa Narale was transferred to an aided school run by the petitioner No.2 / Trust, resulting in the vacancy of un-aided post in the said school on which the petitioner No.1 came to be appointed by following selection and due process of law. Therefore, the appointment of the petitioner No.1 was made on a sanctioned post and further the school in which the appointment was made was run on un-aided basis and the post was also sanctioned on un-aided basis. Therefore this ground of rejection in the impugned

order was totally unsustainable in law.

12. Shri. Bandiwadekar submitted that the last reason given by the respondent No.2 / Education Officer for rejecting the proposal of appointment of petitioner No.1 was that the appointment was contrary to the Government Resolution / Circular or Rule. He submitted that, no details of the said Government Resolution / Circular or Rule had been submitted or stated in the impugned order or informed to the petitioners.

13. Shri. Bandiwadekar, learned counsel appearing on behalf of the petitioners in support of his case referred to and relied upon the judgment of this Court dated 16.07.2009 in Writ Petition No.4635 of 2009 in the case of ***The President, Sudhagad Education Society, Dist. Raigad and Ors. Vs. The Dy. Director of Education and Anr.*** He submitted that in the aforesaid case the Deputy Director of Education had passed an order rejecting the approval to the appointment of the teachers on the ground that the backlog of reserved category candidates had not been filled in. He

submitted that the question that arose in the aforesaid petition was as to whether there was any other rule, regulation, provision or even Government Notification which stated that the appointments which are made against the open category posts should not be approved if there was a backlog in respect of reserved category candidates. He submitted that the aforesaid question was answered in the negative by this Court in the aforesaid case by holding as under in paragraph Nos.10 to 12 of the judgment which reads thus :-

"10. This Court in number of cases had directed the Deputy Director of Education not to refuse to grant approval only on the ground that the backlog of reserved category candidates was not filled in. This Court in the following cases gave the said direction :- Writ Petitions No.4747/2005 with 4752/2005 with 4755/2005 (orders dated 15.9.2005 and 23.9.2005). Similarly, in Writ Petitions No.9289/2004, 7244/2005, 2991/2004, 5687/2005, 5679/2005 (order dated 15.9.2005 and 23.9.2005), 7454/2005, 2948/2009 alongwith other writ petitions has consistently taken the same view.

11. The learned AGP for the State invited my attention to the affidavit-in-reply filed by the Assistant Director of Education. In the said affidavit-in-reply, no reference has been made to any

provision, rule, regulation or Government Notification justifying the stand taken by the Deputy Director Education in respect of the various directions given by this Court in various petitions from time to time. The learned AGP invited my attention to one Resolution dated 22.1.2004 wherein it has been stated that in the event of their being a backlog in respect of reserved category candidates of the posts which are earmarked according to roster framed for the said category, persons from the open category candidate should not be appointed. In the said affidavit in reply, though the percentage has been given of the posts which are to be filled in from the reserved category candidates, the actual position in respect of open category candidate is not given. In my view, therefore, there was no justification for the Deputy Director of Education to refuse to grant approval to the teachers/Shikshan Sevak. It is an admitted position that all these posts which were filled in by the said teachers belonged to the open category. The Deputy Director of Education, therefore, was duty bound to follow the ratio of the judgments referred to hereinabove. These judgments were specifically cited before him by the said teachers which is evident from the impugned order itself which refers to the said judgments passed by this Court. However, though the law laid down by this Court was brought to his notice, he has not given any reasons why the said decision is not followed by him.

12. In my view, there is no justification for the Deputy Director of Education to refuse to grant approval to the said teacher. It is an admitted position that so far as, two teachers who belonged to the OBC category are concerned, since they have applied and are permitted to apply as open category candidate, there was no justification for the Deputy Director to refuse to grant approval even these two OBC candidates who had applied to the open category posts. Taking into consideration, therefore, the view taken by the Division Bench of this Court and the learned Single Judge of this Court in the abovestated cases, the question will have to be answered in the affirmative."

14. PER-CONTRA Shri. Walimbe, learned A.G.P. appearing on behalf of respondent Nos.1 and 2 drew my attention to the affidavit in reply filed by the respondent No.2 / Education Officer and more specifically to the reasons for rejection of the proposal as appearing in paragraph Nos.6 to 8 of the said reply which reads thus :-

"6. I say that in view of the above, on 10.4.2018 the Petitioner No.2 submitted the proposal for seeking an approval for appointment of Petitioner No.1 on the said unaided post. I further say that the Petitioners have failed and neglected to follow the due process

of law while appointing the Petitioner No.1 on the said unaided post. Also, failed and neglected to seek the permission from the office of Respondent No.2 for the purpose of appointment and to call for the interviews by publishing an advertisement in daily newspaper having circulation in the said district. Thus, in absence of due procedure of law and in absence of issuing of advertisement in newspaper as Section 5 of M.E.P.S. Act r/w. Rule 9 of M.E.P.S. Rules 1981, the entire procedure for the appointment of has not been followed by the Petitioners. Therefore, the present writ petition is devoid of any merit and hence, requires to be dismissed on this ground alone.

7. I say that besides, the said contentions, the said proposal cannot be accepted for the reason that there is also a backlog of 43 posts of Reserved categories and actual 31 vacancies are existed. Thus, unless the Reserved category posts are filled in, appointment through Open Category cannot be made. However, 23 posts are filled in, in excess from NT (C) Category and therefore, appointment from Open Category cannot be made. For the aforesaid reasons, the present writ petition requires to be dismissed.

8. I say that this Hon'ble Court admittedly, in various writ petitions including W.P.No.4635/2009 decided on 16.7.2009 has ruled out that "Deputy Director of Education not to refuse to grant approval only on the backlog of Reserved categories filled in".

The ratio laid down by this Hon'ble Court is no more res-integra. However, this Hon'ble Court in the said writ petitions specifically stated that the grant of approval cannot be rejected just because Reserved candidate was not filled in.

In the present case, it can be seen that the Petitioners have also failed and neglected to follow the procedure as contemplated under the M.E.P.S. Act r/w. its Rules and hence, on this ground the said proposal cannot be accepted and approval cannot be granted.

I say the for the aforesaid reasons, the present petition is devoid of any merit and requires to be dismissed with heavy cost, as the Petitioner has tried to misrepresent this Hon'ble Court by showing that by following due process of law, the appointment of the Petitioner No.1 has been made."

15. Shri Walimbe submitted that the petitioner No.2 / Trust had not followed the due process of law while appointing petitioner No.1 on the said un-aided post of Assistant Teacher and had also failed to seek permission from respondent No.2 / Education Officer for the purpose of appointment, conducting of interviews and publishing advertisement in respect of the same. According to him, there was a breach of the provisions of Section 5 of the

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "the Act") read with Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "the Rules") and therefore the entire procedure for appointment of petitioner No.1 was vitiated. He submitted that since there was a backlog of 43 posts of reserved categories and actual 31 vacancies existed, unless the reserved categories posts were filled up, petitioner No.2 / Trust ought to have differed from conducting appointment to the open category.

16. At this stage, the relevant provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 may be stated :-

Certain obligations of Management of private schools. :-

"(1) The Management shall, as soon as possible fill in, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill such vacancy:

[Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy ascertain from the Educational Inspector, Greater Bombay, [the Education

Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education,] whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.]

(2) Every person appointed to fill a permanent vacancy [except [Assistant Teacher (Probationary)]] shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

[Provided that, every person appointed as [Assistant Teacher (Probationary)] shall be on probation for a period of three years.]

[(2A) Subject to the provisions of sub-sections (3) and (4), [Assistant Teacher (Probationary)] shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.]

(3) If in the opinion of the Management, the work or behaviour of any probationer during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said

period after giving him one month's notice [or salary [or honorarium] of one month in lie of notice.]

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).]

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

17. Further the provisions of Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, may also be reproduced to understand the issue at hand. Rule 9 reads thus :-

Appointment of staff. -

(1) The teaching staff of the school shall be adequate having regard to the number of classes in the school and the curriculum including alternative courses provided and the optional subjects taught therein.

(2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee:

Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.

(3) Unless otherwise provided in these rules for every appointment to be made in a school, for a teaching or a non teaching post, the candidates eligible for appointment and desirous of applying for such post shall make an application in writing giving full details regarding name, address, date of birth, educational and professional qualifications, experience, etc., attaching true copies of the original certificates. It shall not be necessary for candidates other than those belonging to the various sections of backward communities for whom posts are reserved under sub-rule (7) to state their castes in their applications.

(4) The age limit for appointment to any post in a school shall be as follows, namely :

(a) for an appointment to be made to any post in a

primary school, a candidate shall not be less than 18 years of age and more than 28 years of age, and in the case of candidate belonging to Backward Classes he shall not be more than 33 years of age :

Provided that, upper age-limit may be relaxed in case of women, ex-servicemen and persons having previous experience with the previous permission of the Deputy Director.

(b) for an appointment to be made to any post in any school other than primary school, a candidate shall not be below the age of 18 years.

(5) A letter of appointment order in the Form in Schedule "D" shall be issued to a candidate appointed to the post. A receipt in token of having received the appointment order shall be obtained from the candidate appointed.

(6) Every employee shall within three months of his appointment, undergo medical examination by a registered medical practitioner named, if any, by the Management or otherwise by any registered medical practitioner. The expenses of medical examination shall be borne by the Management. The appointment shall be conditional pending certificate that he is free from any communicable disease and that he is physically fit to be so appointed.

[(7) The Management shall reserve 52 per cent, of the total number of posts of the teaching and non-teaching

staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows, namely: -

- | | |
|--------------------------------------|----------------------------|
| <i>(a) Scheduled Castes</i> | <i>13 per cent;</i> |
| <i>(b) Schedule Tribes</i> | <i>7 per cent;</i> |
| <i>(c) De-notified Tribes (A)</i> | <i>3 per cent;</i> |
| <i>(d) Nomadic Tribes (B)</i> | <i>2.5 per cent;</i> |
| <i>(e) Nomadic Tribes (c)</i> | <i>3 per cent;</i> |
| <i>(f) Nomadic Tribes (d)</i> | <i>2 per cent;</i> |
| <i>(g) Special Backward Category</i> | <i>2 per cent;</i> |
| <i>(h) Other Backward Classes</i> | <i><u>19 per cent;</u></i> |
| | <i>52 per cent;</i> |

(8) For the purpose of filling up the vacancies reserved under sub-rule (7) the Management shall advertise the vacancies in at least one newspaper having wide circulation in the region and also notify the vacancies to the Employment Exchange of the District and to the District Social Welfare Officer [and to the associations or organisations of persons belonging to Backward Classes, by whatever names such associations or organisations are called and which are recognised by Government for the purposes of this sub-rule] requisitioning the names of qualified personnel, if any, registered with them. If it is not possible to fill in the reserved post from amongst candidates, if any, who have applied in response to the advertisement or

whose names are recommended by the Employment Exchange or the District Social Welfare Officer [or such associations or organisations as aforesaid] or if no such names are recommended by the Employment Exchange or the District Social Welfare Officer [or such associations or organisations as aforesaid] within a period of one month the Management may proceed to fill up the reserved post in accordance with the provisions of sub-rule (9).

(9) (a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes.

(b) In the case of a non-teaching post, if a person from the particular category of Backward Classes is not available, the Management shall make efforts with regular intervals to fill up the post within the period of five years and the post shall not be filled up during that period by appointing any other person who does not belong to the respective category of Backward Class.

(10) (a) The Management shall reserve 33 percent of the total number of posts (or vacancies) of Heads and Assistant Heads for the members of Scheduled Castes,

Scheduled Castes converts to Buddhism, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes and Special Backward Category as follows, namely :

- | | |
|---|--------------------|
| <i>(i) Scheduled Castes and Scheduled Castes</i> | |
| <i>converts to Buddhism</i> | <i>13per cent</i> |
| <i>(ii) Scheduled Tribes including those living</i> | |
| <i>outside the specified areas</i> | <i>07per cent</i> |
| <i>(iii) Denotified Tribes (A)</i> | <i>03per cent</i> |
| <i>(iv) Nomadic Tribes (B)</i> | <i>2.5per cent</i> |
| <i>(v) Nomadic Tribes (C)</i> | <i>3.5per cent</i> |
| <i>(vi) Nomadic Tribes (D)</i> | <i>0.2per cent</i> |
| <i>(vii) Special Backward Categories</i> | <i>0.2per cent</i> |
| | <i>33 per cent</i> |

(b) In case it is not possible to fill in the post of a Head or Assistant Head for which a vacancy is reserved for a person belonging to the Castes and Tribes specified in clause (a), the post may be filled in by promoting a candidate from the other remaining categories in the order specified in clause (a), so however that the percentage of filling up such vacancies does not exceed the limit laid down for each such category. If candidates belonging to any of these categories are not available, then the vacancy or vacancies -

- (i) of the Head may be filled in by promoting any other teacher on the basis of seniority-cum-merit after obtaining previous approval of the Education Officer;*

(ii) of the Assistant Head shall be kept unfilled for a period of three years unless such vacancy or vacancies could be filled in by promotion of any teachers belonging to such Castes or Tribes becoming available during that period.

*[(11) * * *] "*

18. I have considered the rival submissions and with the help of the learned counsel appearing for the respective parties perused the record. At the outset, I may state that the first objection raised by the respondent namely that the appointment of the petitioner was contrary to the provisions of Section 5 of the Act and Rule 9 of the Rules is incorrect. Petitioner No.2 / Trust issued a public advertisement for filling up the vacancy which had occurred on the transfer of Shri Tatoba Appa Narale in the said school. The petitioner No.2 / also conducted the interviews of candidates who had appeared for the selection process and followed the due process of law in their evaluation as required under the provisions of the Act and the Rules stated *supra*. The petitioners have furnished the entire gamut of information as is required for seeking the approval of appointment of

petitioner No.1 to the respondent No.2 / Education Officer, the details of which are annexed at page No.27 of the petition. Therefore, the ground that the appointment of the petitioner No.1 was contrary to the provisions of the Act and the Rules for appointment is not sustainable and deserves to be rejected. In the present case, it cannot be said that the petitioner No.2 / Trust had not followed the due process of law while appointing the petitioner No.1 on the said un-aided post. The selection process carried out by petitioner No.2 / Trust was submitted to the Court during the course of arguments on a query put by the Court and it is observed that on 29.07.2017 the selection of the petitioner No.1 was made after following due process of law. The petitioner No.1 was one of the three selected candidates based on merits. In so far as the second ground of rejection is concerned, that the petitioner No.2 / Trust ought to have filled up the vacant reserved posts before conducting the selection in the open category, the details of roster as on 30.04.2017 as approved by the Assistant Commissioner (Backward Class Section), Divisional Commissioner Office, Pune Division, Pune was submitted. It is seen that there was 11 vacant posts for the

open category and 23 vacant posts for the NT (C) category at the time of appointment of petitioner No.1. This Court in a number of cases had directed the Deputy Director of Education not to refuse to grant approval only on the ground that the backlog of reserved category candidates were not filled in.

19. Therefore, to merely reject the approval on the ground that there was backlog of reservation in the reserved category is not a sustainable ground. Admittedly, the appointment of the petitioner No.1 was made in open category.

20. In view of the above, there is no justification for the respondent No.2 / Education Officer to refuse to grant approval to the proposal of appointment of petitioner No.1 as Assistant Teacher. It is an admitted position that, the appointment of petitioner No.1 has been made in the open category after following due process of law. In this case, though there existed backlog in the reserved category, since the appointment of the petitioner No.1 was made in respect

of vacancy in the open category and the actual position in respect of vacancies was duly submitted before the respondent No.2 / Education Officer. In my view, therefore there is no justification for the respondent No.2 / Education Officer to refuse to grant approval to the proposal of appointment of petitioner No.1. The respondent No.2 / Education Officer ought to have followed the law laid down by this Court (stated *supra*).

21. In view of the above, the present writ petition is allowed in terms of prayer clause 'b' which reads thus :-

"b) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 23.7.2018 (EXHIBIT-G) issued by the Respondent No.2, and accordingly the Respondent No.2 may be directed to grant approval to the appointment of the Petitioner No.1 as Assistant Teacher w.e.f. 31.7.2017 in the un-aided Secondary School of the Petitioner No.2."

22. The impugned order is hereby quashed and set aside. The respondent No.2 / Education Officer is directed to grant approval to the petitioner who is appointed as Assistant Teacher from the open category. It is made clear that, the

approval would relate back to the date when petitioner No.1 was appointed by following due process of law and the proposal was forwarded to the respondent No.2 / Education Officer.

23. Writ petition is allowed in the above stated terms with no order as to costs.

24. Parties to act on an authenticated copy of this order.

(MILIND N. JADHAV, J.)