

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

WRIT PETITION NO.792 OF 2020

- | | | |
|----|--|-----------------|
| 1. | Shri. Yogesh Kalyanrao Ghadage, |) |
| | Aged 31 yrs. Occ. Service, |) |
| | R/o. Yog - Vijay Niwas, |) |
| | Behind Shivshakti Ice Factory, |) |
| | Behind Dighanchi Road, At Post - Atpadi, |) |
| | Dist. Sangli - 415 301. |) |
| 2. | Atpadi Education Society, |) |
| | At Post - 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. |)...Respondent |

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

Ms. M.S. Bane, A.G.P. for Respondent Nos.1 to 2.

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CORAM	: MILIND N. JADHAV, J.
RESERVED ON	: 26th February, 2020.
PRONOUNCED ON	: 13th March, 2020
	in Chamber at 2:40 PM

ORAL 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 reliefs :-

"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 31.5.2019 (EXHIBIT-H) 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. 12.8.2014 on the un-aided post sanctioned to the 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 on un-aided post 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 by appointment order dated 11.08.2014

w.e.f. 12.08.2014 in the pay scale of Rs.9,300-34,800/- G.P. Rs.4,300/- on the post sanctioned on un-aided basis to the division of IX standard 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 is presently running 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. Pursuant to the appointment of petitioner No.1, petitioner No.2 prepared the proposal for seeking approval to the said appointment and submitted the same to respondent No.2. The respondent No.2 declined to accept the said proposal on the ground that by Government Resolution dated 02.05.2012, the State Government had imposed a ban on recruitment in private schools and therefore the appointment of petitioner No.1 made in the year 2014 was in breach of the said ban. The respondent No.2 / Education Officer therefore declined to accept the said proposal. The petitioner No.2 / Trust once again approached

the respondent No.2 / Education Officer by a fresh proposal dated 20.12.2017 and sought grant of approval to the appointment of the petitioner No.1 as Assistant Teacher on un-aided vacant post from 12.08.2014. Along with the said proposal the petitioner No.2 / Trust submitted the detailed list of documentation as required and followed by the petitioner No.2 in appointment of the petitioner No.1 as per law. Since there was no reply, the petitioners once again requested the respondent No.2 / Education Officer on 16.04.2018 to grant the approval.

4. On 31.05.2019 respondent No.2 / Education Officer issued an order, *inter-alia*, informing the Head Master of the said school that for the reasons mentioned in the said order the approval for appointment of the petitioner No.1 was refused. Hence the present petition.

5. 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 16 posts for open category which were lying

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 'Kesari' 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 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 31.07.2014 to appoint the petitioner No.1 as Assistant Teacher on the said un-aided post which had become vacant due to the resignation of Shri. Amarsinh Mundhe.

6. 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 recruitments in private schools. There is no dispute that the said proposal was complete in all its respect. The respondent No.2 / Education Officer in the impugned order dated 31.05.2019 did not specify any particular reason as applicable for rejecting the approval of the petitioner No.1's appointment. However the impugned order had 15 reasons mentioned therein out of which specific reasons were required to be ticked and informed to the petitioners. However the impression given by the impugned order was that, the rejection of approval of the petitioner No.1's appointment was on account of all the 15 typed reasons as stated therein.

7. Shri. Bandiwadekar, learned counsel appearing on behalf of the petitioners submitted that, on the presumption that the rejection of the appointment of the petitioner No.1 was on account of all the 15 reasons it is necessary to place before this Court that none of the said 15 reasons were sustainable in law as well as the facts and circumstances of the present case. He submitted that the petitioners had

specifically mentioned that the appointment of the petitioner No.1 was made against the vacancy which had arisen due to resignation of Shri. Amarsinh Mundhe. He submitted that though there was backlog of reservation in the schools run by the petitioner No.2 / Trust, simultaneously at the same time there was deficit / backlog existing in the open category also. The appointment of the petitioner No.1 was made in one such deficit post in the open category and therefore it could not be deemed to have been in breach of any reservation policy. He submitted that the appointment of the petitioner No.1 was made on un-aided post and not as Shikshan Sevak which is applicable only to aided posts. He submitted that the appointment of the petitioner No.1 was made by following due process of law and each and every documentation pertaining to the selection of the petitioner No.1 was submitted before the respondent No.2. He submitted that the relevant portion of the public advertisement was annexed to the proposal as also the entire chart showing the names of candidates who had applied and who had appeared in the interview and the marks secured by them. He submitted that the extract of roster signed by the respondent No.2 /

Education Officer was also annexed to the proposal. He submitted that the said roster was also verified by the Backward Class Cell for the purpose of appointment which is required to be done after every three years. However he fairly submitted that the roster verified by the backward class cell for the appointment of the petitioner No.1 could not be produced and if the respondent No.2 / Education Officer required the said documents he ought to have called for the same from the petitioner No.2. He submitted that without giving any opportunity to the petitioner No.2, the respondent No.2 / Education Officer rejected the proposal of approval on the basis of the Government Resolution. Finally he submitted that there was no Court proceeding pending in relation to the filling up of the post in which the petitioner No.1 came to be appointed as the previous teacher, viz; Shri. Amarsinh Mundhe against whose vacancy the petitioner No.1 was appointed had resigned from service and therefore there was no question of any court matter being subjudice at the then time.

8. Shri. Bandiwadekar submitted that at the time of

appointment of petitioner No.1, there was a clear vacancy available in the open category as per the roster in respect of all the schools run by the petitioner No.2 / Trust. He submitted that there was backlog of reservation in respect of reserved categories, but the appointment of the petitioner No.1 was made taking into consideration the deficit / backlog in the open category. He submitted that this was permissible and cannot be said to be in breach of any reservation policy or Government Resolution.

9. 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 passed 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 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."

10. Shri. Bandiwadekar also submitted that the aforesaid judgment passed by the learned Single Judge was challenged by the ***The Deputy Director of Education and Anr. vs. Shri Hemant Kishan Gavale and Ors.*** in ***Letters Patent Appeal No.63 of 2010*** wherein by order dated 05.05.2010, the learned Division Bench of this Court upheld the said judgment. Thereafter the Deputy Director of Education carried the same to the Apex Court and the Apex Court in Special Leave Petition to Appeal No.5483-5483 of 2011 dismissed the special leave petitions both the ground of delay and merit. He therefore submitted that the ratio given

by the learned Single Judge in the judgment dated 16.07.2009 in Writ Petition No.4635 of 2011 in the case of The President, Sudhagad Education Society, Dist. Raigad and Ors. Vs. The Dy. Director of Education and Anr. (supra) needs to be adopted and followed in the present case.

11. PER-CONTRA Ms. M.S. Bane, learned A.G.P. appearing on behalf of respondent Nos.1 and 2 fairly submitted that there was no proceeding pending before any Court of law with respect to the appointment of petitioner No.1. She fairly submitted that Shri. Amarsinh Mundhe in whose place the petitioner No.1 came to be appointed had filed no proceeding 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.

12. Ms. Bane learned A.G.P. drew my attention to the reasons for rejection in the affidavit in reply filed by the respondent No.2 / Education Officer and more specifically to paragraph Nos.6 to 8 of the said reply which read thus :-

"6. I say that the entire story made out by the petitioner is concocted and after thought and the same can be seen from the documents as filed by the Petitioner on record. It can be seen that the Petitioner No.2 allegedly has sought permission of the Respondents No.2 on 5.8.2014 for publication of advertisement, then, immediately published an advertisement in daily newspaper 'Daily Kesari' on 6.8.2014. I further say that the Petitioners have not nowhere mentioned in the present writ petition as to when the interview was held and in fact, it can be seen that the decision for appointment of the Petitioner No.1 was taken by the management on 31.7.2014 by passing resolution. The said decision dated 31.7.2014 is prior to alleged advertisement and therefore, the entire farce has been made by the Petitioners that the appointment of the Petitioner No.1 is made in pursuance of the said advertisement dated 6.8.2014. I say that therefore, on this sole ground alone the present writ petition deserves to be dismissed with cost.

7. I say that besides the aforesaid contentions, I also submit that the present Petitioners have furnished the details as to how the vacancies created in January 2014, however, though, there is a backlog of Open Category. There is also a backlog of Reserved categories for the said post and the said backlog from the Reserved categories requires to be filled in on priority basis and thereafter, backlog of Open

Category requires to be filled in. I say that there is a backlog of around 44 posts of Reserved categories which requires to be filled in and therefore, it was not open for the Petitioner No.2 to appoint the Petitioner No.1 from Open Category. Hence, the order / communication dated 31.5.2019 cannot be faulted and the same has been issued within the four corners of law. The said communication / order dated 31.5.2019 states around 15 reasons for the purpose of rejection of proposal of the Petitioners which reasons are set out in the format basis. But, the main reason for the same is non appointment on the said post from the backlog of 44 post of Reserved categories. I say that out of the said 44 posts of Reserved categories, SC (4), ST (26), NT-B (3), NT-D (5), SBC (4) and OBC (2) and out of the same actual vacancies are 38, as can be seen from the Exhibit which is annexed by the Petitioner.

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.

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."

13. Ms. M.S. Bane submitted that the petitioner No.2 / Trust though complied with the due process of law while appointing the petitioner No.1 on the said un-aided post of Assistant Teacher, had however failed to seek permission from respondent No.2 / Education Officer for appointment, conducting the interviews and publishing advertisement etc. According to her, 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 procedure for appointment of petitioner No.1 was vitiated. She submitted that since there was a backlog of 44 posts of reserved categories and actual 38 vacancies existed, unless the reserved categories posts were filled up by the petitioner No.2 / Trust, the appointment to the open category should have been differed.

14. It will be apposite to reproduce the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as applicable and which reads thus :-

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 the 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."

The provisions of Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, 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> |

52 per cent;

(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> |

33 per cent

(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) * * *] "*

15. I have considered the rival submissions with the help of the learned counsels appearing for the respective parties and also perused the record thoroughly. At the outset, I may state that the first objection raised by the respondent namely that the appointment of the petitioner No.1 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 arisen on the resignation of Shri. Amarsinh Mundhe in the school. The petitioner No.2 / Trust conducted the interviews of candidates who had appeared for the selection process and had followed the due process of law in their evaluation as required under the provisions of the Act and the Rules. The petitioners had 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.28 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.

16. 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 entire selection process carried out by the petitioner No.2 / Trust was placed before the Court during the

course of arguments on a query put by the Court and it is observed that on 11.08.2014 the selection of the petitioner No.1 was made after following the due process of law. The petitioner No.1 was one of the ten 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 reserved post before conducting the selection in the open category, the detailed roster as on 11.08.2014 as approved by the Secretary, Atpadi Education Society, Atpadi, Tal. Atpadi, Dist. Sangli was placed on record.

17. This Court has in a number of cases has 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.

18. 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.

19. 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 the petitioner No.1 has been made in the open category after following the 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 placed before the respondent No.2 / Education Officer, there was 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 was required to therefore follow the law laid down by this Court.

20. 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 31.5.2019 (EXHIBIT-H) 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. 12.8.2014 on the un-aided post sanctioned to the Secondary School of the Petitioner No.2."

21. The impugned order dated 31.05.2019 is hereby quashed and set aside. The respondent No.2 / Education Officer is directed to grant approval to the appointment of petitioner No.1 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 forwarding of the proposal to the respondent No.2 / Education Officer.

22. The writ petition is allowed in the above stated terms with no order as to costs.

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

(MILIND N. JADHAV, J.)