

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1507 OF 2020

Swapnil Sanjaykumar Tambole

... Petitioner

VERSUS

The State of Maharashtra and others

... Respondents

Mr D. J. Patil, Advocate for petitioner;

Mr S.B. Pulkundwar, AGP for respondent Nos. 1 to 3;

Mr S. M. Vibhute, Advocate for respondent Nos. 4 and 5

**CORAM : RAVINDRA V. GHUGE
AND
S.G. MEHARE, JJ**

DATE : 13th July, 2021

P. C.

1. The petitioner claims to have joined employment on 1.8.2015 in Maharashtra Vidyalaya, Nilanga, respondent no.4, on 100% grant-in-aid basis pursuant to the advertisement dated 23.7.2015 published in daily Marathwada Kesari. The grievance of the petitioner is that respondent no.3 Education Officer (Secondary), Zilla Parishad, Latur has refused to grant approval to his appointment vide order dated 20.12.2019. The petitioner relies upon the Government Resolution dated 24.8.2018, read with the Government Resolution dated 4.9.2013 and the order of this Court dated 7.6.2019 passed in Writ Petition No.8311 of 2018 filed by Ranjeet Venkatrao Madhale vs. State of Maharashtra and others and two connected petitions.

2. Firstly, we find from the order dated 7.6.2019 that it was an undisputed situation before this Court that the management had sought permission by tendering applications to the Education Officer so as to fill in vacant posts and

the Education Officer has sat over the applications for four years and neither granted those applications nor refused permission. Thereafter, the management had published advertisements on 10.8.2013 and 5.8.2014 and then appointed the petitioners. In the case before us, admittedly, the management has not filed an application to the Education Officer (Secondary) for seeking permission to recruit Teachers. This, therefore, is a distinguishing feature and the order dated 7.6.2019 would not be applicable to the case of the petitioner.

3. The petitioner submits that the State of Maharashtra had issued a Government Resolution on 4.9.2013 declaring that the ban on recruitment of 1599 posts pertaining to the subjects of Mathematics, English and Science in the secondary high schools, had been lifted and consequentially, the permission to fill in 1599 posts subject to the backlog and absorption of surplus Teachers, was granted. The petitioner, however, is unable to state as to whether his post was one which was included in these 1599 posts. He, therefore, submits that vide paragraph 2 of the Government Resolution dated 24.8.2018, the case of the petitioner may be re-considered for grant of approval.

4. The learned Advocate appearing for the management submits that the management would not go beyond the prescription of the Government Resolutions dated 24.8.2018 and 4.9.2013.

5. The learned A.G.P. submits that the case of the petitioner is quite different. He is from the open category. When he was recruited, neither the

backlog was cleared, nor the surplus Teachers were absorbed. He was not eligible for recruitment.

6. We find that the Education Officer (Secondary) does not seem to have considered the Government Resolution dated 24.8.2018 while passing the impugned order rejecting the proposal for approval of the petitioner. The State of Maharashtra has referred to the orders of this Court dated 9.3.2017 in Writ Petition No.10580 of 2015 dated 23.8.2017 in Writ Petition No.8532 of 2017 and dated 10.7.2017 in Writ Petition No.8587 of 2016, in the said Government Resolution, which indicate the conditions to be fulfilled while considering the proposal of a teacher for approval.

7. In view of the above, this petition is partly allowed and the impugned order dated 20.12.2019 passed by the Education Officer (Secondary) is quashed and set aside only to enable the Education Officer to re-consider the case of the petitioner in the light of the following factors :

- a) Was the recruitment of the petitioner on 1.8.2015 pursuant to the advertisement dated 23.7.2015, permissible considering the Government Resolution dated 2.5.2012 and the Government Resolution dated 4.9.2013?
- b) Was the appointment of the petitioner made for filling up a vacancy in Mathematics, that was included in the 1599 posts vacant as observed by the Government in its Government Resolution dated 4.9.2013 and, therefore, whether prior permission of the Education Officer necessary?

- c) Was the recruitment of the petitioner made after fulfilling of the backlog of the reserved category candidates?
- d) Was the recruitment of the petitioner made as against available permanent vacant posts from the open category for the subject of Mathematics?
- e) Since the petitioner claims that he was recruited on a post which fell vacant due to the retirement of Prabhu Babarao Rathod (who was recruited from the open category), would such recruitment be legally acceptable?

8. We make it clear that we have not expressed any opinion about the merits of the claim of the petitioner notwithstanding the submission of the A.G.P. that his case cannot be considered as per the Government Resolution dated 04.09.2013.

9. We expect the Education Officer (Secondary), respondent no.3 herein, to consider the record before him and thereafter pass an order only if the petitioner fulfills the above stated conditions from (a) to (e).

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

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