

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 WRIT PETITION NO.3142 OF 2020

PRAVIN BODHU KASBE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Rodge Pratap G.
AGP for Respondent No.1-State : Mr. S. B. Pulkundwar.
Advocate for Respondent No.2 : Mr. Kadam Nitin S.

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

DATE : 03.08.2021

ORAL ORDER (Per Ravindra V. Ghuge, J.) :-

1. By this petition, the petitioner seeks to challenge the order dated 06.08.2018 passed by respondent No.2 - Education Officer vide which the latter has declined to approve the appointment of the petitioner as a Shikshan Sevak with effect from 19.09.2017.

2. The petitioner contends that he had applied to respondent No.3 - Management pursuant to an advertisement dated 10.09.2017 published in daily '*Bahurangi Varta*' inviting applications from the schedule caste category for the post of

Shikshan Sevak. The interviews were scheduled on 19.09.2017. The petitioner was interviewed, selected and recommended for appointment as a Shikshan Sevak on 19.09.2017 itself and he immediately joined the said post on the same day, 19.09.2017. This entire exercise is completed on the same day.

3. On 26.04.2018, respondent No.4 - Head Master forwarded the proposal of the petitioner for grant of approval as a Shikshan Sevak. Since no decision was forthcoming, the petitioner filed Writ Petition No.9020 of 2018 for seeking directions to the Education Officer to do the needful. Vide order dated 06.08.2018, this Court directed the Education Officer to decide the pending proposal in accordance with law and expeditiously. By the impugned order dated 06.08.2018, which was passed on the same day on which this Court passed an order, the Education Officer refused to accord his approval to the appointment of the petitioner.

4. The petitioner contended that the Management had forwarded three applications to the Education Officer, dated 03.07.2017, 01.08.2017 and 01.09.2017, for seeking

permission to resort to a new recruitment process. Though these applications were served on the office of the Education Officer, no steps were taken and finally, the Management held a special meeting on 06.09.2017 and decided to proceed to publish an advertisement for selecting a Shikshan Sevak. On 10.09.2017, such an advertisement was published in daily '*Bahurangi Varta*'. It is further contended that the selection of the petitioner is strictly in accordance with the procedure laid down by law. There is no ground for any suspicion. The Education Officer cannot refuse approval to the petitioner. The reasons assigned by the Education Officer are baseless.

5. We had extensively heard this matter on 02.08.2021. We adjourned this matter for today only to find out whether the official inward register of the Education Officer (Primary), Zilla Parishad, Nanded would indicate the receipt of three purported applications dated 03.07.2017, 01.08.2017 and 01.09.2017 sent by respondent No.3 – Management allegedly seeking permission of the Education Officer to resort to a process for recruitment of teachers.

6. Today, the original registers are produced before us by

the learned advocate representing respondent No.2 – Education Officer (Primary). He has himself gone through every sheet of paper with reference to the date of the letters being received by the inward department and the dates on which such letters are received. He informs us that in the entire inward register, which is intact and one would not find any interpolation, the letters dated 03.07.2017, 01.08.2017 and 01.09.2017 have not been recorded. To be doubly sure, we ourselves turned over every sheet of the paper of the inward register and we did not find any entry with regard to the three applications purportedly served by respondent No.3 – Management upon the Education Officer.

7. We have undertaken the above exercise in view of the strenuous submissions of the learned advocate representing respondent No.2 that these three letters were never received by the office of the Education Officer and there is no entry of the said letters in the inward register. With this submission, it is further contended that the Management may have created a record to create an eye - wash that they had made three applications to the Education Officer and that the Education Officer did not respond to these applications and hence the

Management, unilaterally proceeded to publish an advertisement in daily newspaper '*Bahurangi Varta*'. The learned advocate for the Education Officer submits that the department may not even have heard about such newspaper by name '*Bahurangi Varta*' in which the advertisement for filling up the posts was purportedly published on 10.09.2017.

8. After considering the submissions of the learned advocate for the respective sides before us, we have noticed the following glaring factors :

- (a) There is no evidence of the Management having entered applications in the inward section of respondent No.2 for seeking permission to resort to a recruitment process.
- (b) It cannot be ruled out that the stamp and some signature of an unknown person may have been obtained on the three applications placed before us to create a picture that the Management had been pursuing the Education Officer for permission and that the Education Officer had sat over the three applications.

- (c) The learned advocate for the petitioner alleges that one Mrs. Garje from the inward department of the Education Officer has signed on these three applications.
- (d) The alleged advertisement has been published in an unknown daily newspaper '*Bahurangi Varta*'.
- (e) An advertisement does not appear to have been published in two widely circulated vernacular newspaper even in district Nanded, as required by law.
- (f) Pursuant to the directions of this Court at it's Nagpur Bench in Public Interest Litigation No.8 of 2015 on 24.06.2015, the *Pavitra Portal* was introduced by the School Education and Sports Department, State of Maharashtra through it's Government Resolution dated 23.06.2017. The *Pavitra Portal* is to ensure a portal to be visible for all the candidates interested in the process of teachers' recruitment.
- (g) Pursuant to the Government Resolution dated 23.06.2017, all such educational institutions including

respondent No.4 herein were legally mandated to upload the recruitment process on the SARAL Portal and there could not have been a private recruitment process.

- (h) "SARAL" (Systematic Administrative Reforms for Achievement in Learning by Students) was also introduced by the Government vide Government Resolution dated 23.06.2017 and the vacant positions of teachers as well as the number of surplus teachers was to be uploaded on SARAL website, as per Clause 3.1 of the Government Resolution.
- (i) The surplus teachers were to be absorbed whenever and wherever vacancies arose.
- (j) The teachers' recruitment was permitted only through the *Pavitra Portal*, as per Clause 3.2 of the said Government Resolution.
- (k) The said Government Resolution also prescribes at Clause 3.4 that besides the *Pavitra Portal*, the Management has to publish the advertisement in two (2) newspapers having maximum circulation in the

region and out of the two, one has to be a Marathi Newspaper. So also, such recruitment process has to be intimated to the District Social Welfare Department and the Employment Exchange Department.

- (l) Vide Clause 3.5, interested candidates had to apply pursuant to the advertisement along with the chart of their score acquired under T.E.T. (Teachers Eligibility Test).
- (m) There are several other conditions introduced in the said Government Resolution which have mandatory effect and this has been done by the State Government pursuant to the order dated 24.06.2015 passed in the Public Interest Litigation.
- (n) Even a single glance at the advertisement at issue, indicates that it had the nature of a walk in interview. Candidates were called upon to attend the interview between 10.00 to 4.00 p.m., on 18.09.2017. Besides this one statement, there are no other conditions set out in the advertisement, which is as vague as it could be.

(o) No record of the selection of the Petitioners (minutes of the selection committee), were placed before the Education Officer.

9. Considering the above, we find the entire recruitment exercise to be highly suspicious and an eye wash. It appears that the Management has instrumentalised the inward stamps of the Education Department on its three applications and by publishing an advertisement in a practically unknown newspaper, going against the mandate of the Government Resolution dated 23.06.2017, has appointed the petitioner on 19.09.2017 for a period of only three (3) years. He was appointed on a consolidated package of Rs.7,000/- per month as a 'Shikshan Sevak' for a period of three (3) years. Moreover, the view taken by the Education Officer in the impugned order dated 06.08.2018 refusing to accord approval to the appointment of the petitioner for a period of three (3) years as a 'Shikshan Sevak' in the light of the advertisement being suspicious and no details of the selection process having been placed before the Education Officer, cannot be faulted.

10. In view of the above, this petition is dismissed. However,

we find it appropriate to issue certain directions to the Principal Secretary, Department of School Education, State of Maharashtra as under :

- (i) The Government Resolution dated 23.06.2017 shall be scrupulously followed without any exception.
- (ii) Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981, by which amendment has been introduced pursuant to the judgment in P.I.L. dated 24.06.2015, mandating the publication of advertisement, besides the *Pavitra Portal*, in two widely circulated newspapers, out of which, one should be a local newspaper having wide circulation in the region, should be strictly implemented.
- (iii) All Education Officers in the State of Maharashtra and all concerned authorities shall be directed by the department of School Education that they shall scrupulously follow the Government Resolution dated 23.06.2017 and

Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and no appointment in violation of any of these provisions shall be approved.

- (iv) The State Government should also intimate the authorities that any person guilty of such violation would be subjected to strict disciplinary action. So also, action be initiated against such Managements, who flout these rules and the Government Resolution.
- (v) The Chief Executive Officer, Zilla Parishad, Nanded is directed to initiate an inquiry by appointing a Senior Officer from the Education Department, to trace out as to who was the person who has signed on the three applications filed by the Management purportedly with the Education Officer's Office (Primary), Zilla Parishad, Nanded on 03.07.2017, 01.08.2017 and 01.09.2017 and initiate appropriate disciplinary action, if the person who has signed

in acknowledgment turns out to be an employee
of the Zilla Parishad.

11. The learned Registrar (Judicial) of this Court shall place a copy of this order before the Principal Secretary, Department of School Education, State of Maharashtra so as to be circulated to the concerned authorities, through out the State for information and compliance.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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