

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

936 WRIT PETITION NO.5417 OF 2018

Vaishali Ramling Todkari,
Age : Major, Occu.: Servioce as
Shikshan Sevak
R/o/: Narayan Nagar, Latur,
Tq. & Dist.: Latur ... Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
Department of School Education,
Mantralya, Mumbai-32.
2. The Deputy Director of Education,
latur Division, Latur,
Tq. & Dist,: Latur.
3. The Education Officer, (Secondary),
Zilla Parishad, Latur.
4. Shri Mahatma Basweshwar
Shikshan Sanstha, Latur,
Tq. & Dist.: Latur,
Through : Its Administer :
Smt. Nivedita S. Pawar.
5. Shri Nilkanteshwar Secondary
and Higher Secondary School,
Barsi Road, Latur, Tq. & Dist. Latur,
Through its Head Master. ... Respondents.

...
Advocate for Petitioner : Mr. V. S. Panpatte
AGP for Respondent-State: Mr. S. P. Sonpawale
...

**CORAM: SUNIL P. DESHMUKH &
ABHAY AHUJA, JJ.**

DATED: 2nd FEBRUARY, 2021.

ORAL JUDGMENT : (Per Sunil P. Deshmukh, J.)

Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, with consent.

2. The petitioner is before us in present writ petition aggrieved by order dated 27.04.2018 passed by Education Officer, Secondary, Zilla Parishad, Latur whereunder proposal for approval to his appointment dated 18.12.2012 has been rejected.

3. After hearing learned advocates it transpires that relevant factual aspects are not in dispute. While one Mr. B. S. Swami was to retire after attaining age of superannuation on 13.11.2012, permission had been sought for recruitment on said post falling vacant under a communication dated 29.10.2012 on behalf of the management by headmaster. There had been no response to the same. The post being existing and sanctioned, and being necessary to be filled up, an advertisement had been issued for recruitment on 02.12.2012.

4. After being selected under due selection process, the petitioner had been issued appointment order dated 18.12.2013 as *Shikshan Sevak* for a period of three years from 19.12.2012 to 18.12.2015.

5. The management had sent a proposal on 27th August, 2013 for approval to said appointment to the Education Officer.

However, no decision had been taken on said proposal for over three years and suddenly impugned order has been issued. The impugned order refers to that petitioner's appointment had been in breach of and is during the ban on appointments under Government Resolution dated 02.05.2012 and without following Section 5(1) of Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (MEPS Act) particularly proviso thereunder quoting certain observations from a decision of this court.

6. Learned counsel for the petitioner Mr. Panpatte submits that there is absolutely no substance in the contention on behalf of respondents about that Section 5(1) had not been followed at all. He submits that it cannot be denied that permission had in fact been solicited for filling up the post and that there had been no response to the same. He further submits that the process under the proviso has been substantially followed. He particularly emphasizes that despite the communication, for over 5 years not a single person had been sent for absorption from surplus teachers which are stated to be available during this period, whereas certain surplus teachers have indeed been sent to other schools run by the same management and have accordingly been absorbed. However, so far as petitioner's case is concerned on his post there has not been a single person sent by the Education Officer.

7. Mr. Panpatte in support of his submission, places reliance on a clutch of decisions and particularly puts emphasis on the decision in the case of ***Shailaja Ashokrao Walse vs. State of Maharashtra and others, reported in 1999(1) Mh.L.J.291.*** He submits that in paragraph No.26, similar situation as appearing in the present matter has been dealt with and observations thereunder have been relied on in the decision in Writ Petition No. 837 of 2018 by a Division Bench of this Court under order dated 13.04.2018. He further refers to an order dated 14th July, 2015 in Writ Petition No. 7878 of 2014. He submits that therein the court has observed that management had sought permission from Education Officer under application dated 17.05.2013 to fill up the posts by issuing advertisement and after waiting for more than 15 days thereafter, on 09.06.2013, advertisement was given. Pursuant to said advertisement, selection process was conducted and petitioner therein had been appointed. In the circumstances, the court had found that it was inappropriate to reject the proposal on the ground that there is no prior permission sought and further the court had quashed impugned order and had specifically directed to consider proposal submitted by Headmaster seeking approval to appointment of petitioner and further that it shall not be rejected on the ground that prior permission was not obtained or surplus candidates were required to be absorbed. He, therefore, urges that the petition be allowed in terms as prayed for.

8. Learned AGP purports to resist the petition contending that there had been ban on recruitment vide Government Resolution dated 02.05.2012 and that it would not be said that there was due compliance of the proviso under Section 5(1).

9. It emerges that management had sought permission from the Education Officer for filling up the post falling vacant and that the request was not responded to by Education Officer. So is the case in respect of the proposal for approval to appointment of the petitioner which was preceded by selection procedure. The same as well had not been decided until the impugned order had been passed in 2018. It is not the case of the respondent that at any point of time any surplus teachers which were stated to be available, had ever been sent to the school wherein the petitioner had been appointed, until the impugned order had been passed. Veracity of the claim on behalf of the petitioner about there being surplus teachers sent to others school run by the same management and being absorbed has also not been disputed. Equally, there is no case on behalf of the respondent about any surplus teacher ever been sent to, for absorption in the school where the petitioner is working.

10. It appears that the respondents had sat tight over the proposal for over five years without any action and in the meanwhile, the petitioner appears to have acquired status and character as would accrue to him with the passage of time.

11. Having regard to the observations and the directions in Writ Petition No.9709 of 2016 decided on 23.11.2017, while permission was sought for filling up the post, it would not be case that there is absolute non-compliance of requirements under Section 5(1) of MEPS Act.

12. As such, having regard to aforesaid and position emerging from the decisions, impugned order has been rendered unsustainable and would be required to be set aside, and the same is set aside. Appropriate order be passed by Education Officer with regard to proposal for approval to appointment of the petitioner which shall not be rejected for the reasons given in the impugned order. The exercise would be completed as expeditiously as possible, preferably within a period of eight (08) weeks from the date of receipt of writ of this order.

13. Rule is made absolute in aforesaid terms.

14. Writ petition is disposed of.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)

vsm/