

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10035 OF 2019

- 1) Mohimata Shikshan Sanstha,
Through: Its Secretary -
Padmakar Marutirao Sarpate,
C/o-Mohimata Vidyalaya, Madal-mohi,
Tq-Georai, District-Beed,
- 2) Vitthal s/o Bhimrao Rathod,
Age-36 years, Occu:Service as
Shikshan Sevak, Zilla Parishad,
Beed, Dist-Beed.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through: Principal Secretary,
Education Department,
Mantralaya, Mumbai-32,
- 2) The Deputy Director, Education,
Aurangabad Region, Aurangabad,
District-Aurangabad,
- 3) The Education Officer (Secondary),
Zilla Parishad, Beed.

...RESPONDENTS

...
Ms.Anjali Bajpai-Dube Advocate for Petitioners.
Mr.S.B. Yawalkar, A.G.P. for Respondents No. 1 to 3.
...

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

DATE : 1st FEBRUARY, 2021

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties finally, by consent.

2. Petitioner No. 1 - institution had moved education officer under letter dated 4th June 2013, seeking permission to issue advertisement, referring to that there has been backlog of about four posts viz: Scheduled Tribe, Scheduled Caste, V.J. N.T. (ब) (क) and Physically Disabled Person. It was requested to grant permission to fill up three posts viz: Scheduled Caste/Disabled - one, Scheduled Tribe - one and V.J. N.T. (ब) (क) - one. Under communication dated 3rd February 2014, the Education Officer had granted permission to issue advertisement directing that the same shall comply with conditions referred to thereunder.

3. It appears that pursuant to the same, an advertisement was issued on 7th February 2014 for two posts, showing those to be reserved for V.J. N.T. (अ) (क), Scheduled Caste and Scheduled Tribe and person from Disabled category.

4. It is the case of petitioners that pursuant to the advertisement, applications were received and petitioner No. 2 has been appointed under order dated 3rd March 2014, as *Shikshan Sevak* for a period of three years from 3rd March 2014 to 2nd March 2017, being disabled person simultaneously coming from V.J. N.T. (अ) category, being qualified and found suitable.

5. While the matter for approval to said appointment was taken to Education officer, the same has been responded to, referring to that pursuant to order dated 31st July 2013, passed by this court in writ petitions bearing No. 759 of 2012, 760 of 2012 and 260 of 2013, there had been an order of *status-quo* and, as such, approval could not be granted. Reference has further been made to that head master under his letter dated 24th August 2017, has requested to grant approval to appointment of petitioner No. 2 having regard to this Court's

order dated 12th February, 2014. It has further been observed that having regard to government resolution dated 23rd August, 2005, the appointment is to be made on a reserved post considering the provisions for appointment of a disabled person holding requisite qualification and the petitioner has been appointed in breach of said resolution and, therefore, approval cannot be accorded, and as such, present petitioners are before the court.

6. Learned counsel for petitioners has taken us through the correspondence between the institution – petitioner No. 1 and the Education Officer and purports to point out that request had, in fact, been made to permit to issue advertisement since there was backlog of posts including that of a disabled person. In fact, permission had been accorded to, as referred to above under communication dated 3rd February 2014, pursuant to which, petitioner No. 1 had appointed petitioner No. 2 after due process of recruitment. From 2014 to 2017, approval could not be given having regard to orders passed by this court and the same has been purportedly declined for the reasons which are unsustainable.

7. Learned counsel for petitioners contends that petitioner No. 2 being educationally qualified and otherwise falling under the category referred to in government resolution dated 23rd August 2005, and particularly, it is indisputable that his candidature is covered under disabilities as referred to in the resolution under the category while he suffers disability to the extent of 41%.

8. On the other hand, learned AGP Mr. Yawalkar submits that advertisement had been issued for disabled category from vertical reservation viz. V.J. N.T. (अ) (क), Scheduled Caste and Scheduled Tribe. Petitioner No. 2 is not from any of these categories but he is V.J. N.T. (ख).

Learned AGP also refers to that, in government resolution there is specific direction for recruitment of disabled persons having requisite qualification. Since appointment of petitioner No. 2 would not fit into roster policy and government resolution dated 23rd August 2005, proposal had been turned down.

9. While such submissions on behalf of respondents are put forth, respondents have not been able to show as to what is the roster policy and as to how appointment of petitioner No. 2 could be termed as not in accordance with either roster policy or for that matter government resolution dated 23rd August 2005. Perusal of the impugned communication dated 31st May 2019 would show that it does not refer to any specific particular ascertainable reason save that it is against government resolution dated 23rd August 2005 and provisions of roster policy. The impugned order appears to be, in the circumstances, non speaking.

10. In the circumstances, impugned order dated 31st May 2019 passed by respondent No. 3 – Education officer (Secondary), Zilla Parishad, Beed is set aside. The proposal to grant approval for appointment of petitioner No. 2 stands revived for reconsideration and for passing appropriate orders, keeping in view that there is a backlog of appointment for the post for disabled person and regard may have to be had to the Persons with Disabilities (Equal Opportunities Protection Of Rights and Full Participation) Act, 1995 and that petitioner No. 2 being not from V.J. N.T. (अ) (क) category, shall not impede the approval, if

the petitioner No.2 is otherwise eligible and qualified to be appointed in the disabled category. We hope that proper decision would be taken within a period of six weeks from the date of receipt of writ of this order.

11. Rule is made absolute in above terms. Writ petition accordingly stands disposed of.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]

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