

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1567 OF 2018

WITH

CIVIL APPLICATION NO.15156 OF 2018

IN WP/1567/2018

1. Pratibha Niketan Education Society,
Through its General Secretary,
Sakharam S/o Digambarrao Mahajan,
Aged 75 years, R/o 53, Bhagyanagar, Nanded.
2. Pratibha Niketan Primary School,
Shrinagar, Nanded,
Through its Head Master,
Nanded. ... **Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
2. The Zilla Parishad, Nanded,
Through its Chief Executive Officer.
3. The Education Officer (Primary),
Zilla Parishad, Nanded. ... **Respondents**

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Advocate for Petitioners : Mr. S. M. Kulkarni.
AGP for Respondents-State : Mr. S. B. Yawalkar.
Advocate for Respondent No.3 : Mr. N. S. Kadam.

...

WITH

WRIT PETITION NO.411 OF 2021

Dnyaneshwar Laxman Chavan,
Age : 32 years, Occu. Assistant Teacher,
R/o Chhatrapati Chowk, Nanded,
Tq. and Dist. Nanded. **... Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sport Department,
Mantralaya, Mumbai.
2. The Commissioner of Education,
Educational Commissionerate Officer,
Bhalbharti, Senpati Bapat Marg,
Pune.
3. The Director of Education,
Maharashtra State, Pune.
4. The Dy. Director of Education,
Aurangabad Division, Aurangabad.
5. The Education Officer (Primary),
Zilla Parishad, Nanded,
Tq. and Dist. Nanded.
6. The Pratibha Niketan Education Society,
Shrinagar, Nanded, Tq. and Dist. Nanded,
Through its President / Secretary,
7. Pratibha Niketan Primary School,
Shrinagar Nanded, Tq. and Dist. Nanded,
Through its Head Master. **... Respondents**

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Advocate for Petitioner : Mr. S. B. Ghatol Patil.
AGP for Respondents-State : Mr. S. B. Yawalkar.
Adv. for Respondent No.5 : Smt. Y. S. Thorat-Kshirsagar.
Advocate for Respondent Nos.6 & 7 : Mr. S. M. Kulkarni.

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

DATE : 17.11.2021

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

1. Leave to correct the prayer clause in the first petition. Correction be carried out forthwith.
2. Rule. Rule made returnable forthwith and both the petitions are heard finally by the consent of the parties.
3. In the first petition, the petitioners have put forth amended prayer clauses 'a', 'aa' and 'b', which reads as under :-

"a] By issuing a writ of Mandamus or any other appropriate writ or order, the respondent No.3 may be directed to grant approval to the Assistant Teachers referred in para No.6 as per the proposal sent by the Petitioner on 29.04.2014."

"AA] By issuing a writ of Certiorari or any other appropriate Writ, Order or Direction in the like nature the order dated 02.03.2017 passed by the Education Officer (Primary), Zilla Parishad, Nanded annexed at Exh-C at page 15 of the writ petition may kindly be quashed."

"b] By issuing a writ of Mandamus or any other appropriate writ or order, the Respondent No.3 may be directed to release salaries of the Assistant Teachers

referred in para No.6 as per the proposal sent by the Petitioner on 29.04.2014."

4. Having extensively heard the learned advocates for the respective sides and having perused the petition paper books, it is apparent that the Education Officer had received an application from the Management dated 16.12.2013 seeking permission to recruit two positions of Assistant Teachers for the subjects of Geology, Chemistry, Biology and Mathematics. One post was to be reserved for the Vimukta Jati (VJ-A) considering the backlog of the reservations and another post was for the open category.

5. It is undisputed that the Education Officer (Primary), vide communication dated 04.03.2014, informed the Management, firstly, that they have not absorbed a trained teacher by name Smt. Shinde Anjana Govindrao and secondly, as there are two positions of Assistant Teachers vacant, "if there are no surplus teachers, the Management can proceed to advertise and recruit the positions".

6. It is also undisputed that pursuant to the permission granted by the Education Officer, the Management published an advertisement in daily "*Godatir Samachar*", Nanded on 06.03.2014, wherein they advertised one position from the SBC category and one position from the VJ-A category. The Management thus, has violated the approval granted by the Education Officer to fill in one post to the extent of the open category.

7. Before we deal with the grievance of the Management, we need to record our serious displeasure at the manner, in which, the Education Officer (Primary), Zilla Parishad, Nanded accorded permission to the Management to fill in the two positions. It is undisputed that the first part of the letter of the Education Officer voices a grievance as regards the Management failing to absorb a suitable surplus teacher. This grievance of the Education Officer was redressed by the Management by absorbing the teacher namely Smt. Shinde Anjana Govindrao as per the

recommendation of the Education Officer. There were still two positions of Assistant Teachers which has nothing to do with the absorption of Smt. Shinde Anjana Govindrao since she was a Trained Graduate Teacher.

8. It requires no debate that the Education Officer has the list of surplus teachers. The Education Officer, who granted the permission to the Management to recruit the vacant positions vide his communication dated 04.03.2014, has very casually stated that if there are no surplus teachers with his office, the Management may fill in the position. To say the least, such a communication indicates a careless and callous attitude of the Education Officer. It was his duty to assess as to whether there are any surplus teachers considering the effect of Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (herein after referred to as "M.E.P.S. Act") and if there were suitable surplus teachers, there was no question of granting permission to the Management to

fill up the positions from the public as the suitable surplus teacher could have been recommended for absorption. Without doing so, he has conveyed to the Management that if there are no surplus teachers, the Management may proceed to recruit from the public at large. We would deal with this conduct of the then Education Officer, Mr. Eknath Madavi as we conclude this judgment.

9. The learned advocate for the Management has strenuously tried to convince us that the Management appears to have committed a mistake in recruiting a candidate from the SBC category by mistakenly advertising one position as being reserved for the SBC category. We are unable to persuade ourselves to accept the explanation put forth by the Management for the reasons that the Education Officer granted permission on 04.03.2014 and the advertisement was published on 06.03.2014 within 48 hours. As such, the said explanation of the Management of committing a mistake, is fallacious.

10. All said and done, the Management has partly erred by committing a mischief by publishing the advertisement, within 48 hours, incorporating a reservation for the S.B.C. category instead of the open category. One teacher, namely Mr. Dnyaneshwar Laxman Chavan (Petitioner in the second petition), belonging to the VJ-A category and having a validity certificate, was rightly recruited. However, by manipulating the advertisement to introduce a reservation for the S.B.C. category in place of the open category, the Management has acted fraudulently.

11. The petitioner-Management had earlier approached this Court in Writ Petition No.6641 of 2015 making a grievance that the appointment of Mr. D. L. Chavan (VJ-A) and Smt. Umatai Laxman Gadewar (S.B.C.) are before the Education Officer for approval and the Education Officer is sitting over the file. By order dated 14.09.2016, this Court directed the Education Officer to decide the proposals strictly in accordance with law and the policy of the State Government, on its own merits,

within a period of six months. It is pursuant to the said direction that the Education Officer has passed an order on 02.03.2017, after about 18 months, concluding that as there were surplus teachers and this Court had delivered a judgment in Writ Petition No.9076 of 2016 to absorb surplus teachers under Section 5(1) of the M.E.P.S. Act and only after suitable surplus teachers are not available, that the Management should recruit fresh hands.

12. It calls for no debate that an impugned order has to stand on its own feet. In the impugned order, the Education Officer has held that as there were surplus teachers available, which he never notified to the Management earlier while granting permission to recruit fresh hands, no approval can be granted to these two appointments. No stand has been taken by the Education Officer as to whether these two teachers or either of them was not qualified to be appointed or there was any other legal impediment. The only stand taken was that there are surplus teachers available. This

stand is taken in March 2017 and considering the permission granted by the Education Officer vide the communication dated 04.03.2014, there was no surplus teacher available in his office. As such, the appointments of these two teachers with effect from 29.04.2014, which was preceded by an interview on 12.03.2014 and a practical examination on 19.03.2014, the availability of surplus teachers as in March 2017 cannot be an impediment that could be made applicable to the appointments of these two candidates, which was made on 29.04.2014.

13. The learned advocate for the Education Officer had the audacity to canvass before us that these matters may once again be remitted to the door steps of the Education Officer. Our Courts have been dealing with such cases, in large numbers and there are instances when we have remitted the matters to the Education Officer to be decided afresh. In many cases, such exercise has been unfruitful as, on the one hand, the Education Officer delays the decision and on the other

hand approvals are rejected on trivial grounds.

14. As held in *Mohinder Singh Gill Vs. Chief Election Commissioner 1978 AIR (SC) 851*, reasons for supporting the decision of an authority are to emerge from the impugned order and one is not supposed to look elsewhere searching for such reasons, inasmuch as, reasons cannot be supplanted into the impugned order while making oral submissions before the Court. We do not find any reason, to the extent of indicating that these two teachers were not qualified to be appointed, in the impugned order. So also, no such reason is cited in the affidavit-in-reply filed on record. It was by way of a casual submission made by the learned advocate for the Zilla Parishad that there is a possibility that the teachers may not be qualified. We neither can entertain such a submission, nor are we impressed by the same in the manner, in which, it has been canvassed before us.

15. In view of the above, this petition is allowed. The impugned order dated 02.03.2017 is quashed and set

aside.

16. Considering the conduct of the Education Officer (Primary), Zilla Parishad, Nanded, as in March 2014, we deem it appropriate to direct the Chief Executive Officer of the Zilla Parishad to ensure that the said Education Officer is penalized with a fine of Rs.25,000/- (Rupees Twenty Five Thousand only), which he shall deposit in this Court, from his salary account with the Zilla Parishad, to be credited to the State Exchequer. If he has superannuated, the said amount shall be deducted from his pension in five equated monthly installments. The learned advocate for the Education Officer submits that the said Education Officer has retired and presently is in jail. As such, the costs amount shall be recovered from his pensionary benefits.

17. Considering the conduct of the Management, we could have taken a view that the appointment of Smt. Umatai Laxman Gadewar from the S.B.C. category was not in tune with the permission granted by the Education Officer. However, she cannot be blamed as

she is not at fault. She perused the advertisement indicating one post having been reserved for the S.B.C. category and she applied. She is not aware as to what has transpired between the Education Officer and the Management prior thereto or that her post was never approved for the S.B.C. category. The blame can therefore lie only with the Management.

18. A lenient view cannot be taken in such cases as we find, day in and day out, that the private Managements are indulging in such tactics to absorb appointees, who are not appointed in tune with the advertisement or the permission granted by the Education Officer. We are, therefore, imposing costs of Rs.5,00,000/- (Rupees Five Lacs only) on the petitioner-Management namely Pratibha Niketan, Education Society, Nanded and the said amount shall be deposited in this Court within six (6) weeks from today. The said amount shall be credited to the State Exchequer. Compliance of such direction shall be placed before the Court after eight (8) weeks from today.

19. We deem it appropriate to direct the Education Officer, Zilla Parishad to scrupulously analyse permissions sought by the Managements for recruitment of fresh hands and to ensure that suitable surplus teachers are absorbed on priority basis and also observe the conduct of this Management for a period of two years from today. If any further illegalities are noticed, the steps to appoint an administrator, may be initiated.

20. The approval orders of these two teachers shall be issued by the In-charge Education Officer / Regular Education Officer within two weeks from today and their monetary benefits shall be calculated by the Management within four (4) weeks from today, so as to forward the bills to the Education officer, which shall be cleared within four (4) weeks therefrom.

21. Rule is made absolute in the above terms.

22. Pending Civil Application does not survive and stands disposed off.

23. In view of the above order, Writ Petition No.411 of 2021 filed by one of the appointees namely Mr. Dnyaneshwar Laxman Chavan stands allowed as his grievance is redressed. Rule is made absolute in the above terms.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-