

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

WRIT PETITION NO.1559 OF 2018

1. Pratibha Niketan Education Society,
Through its General Secretary,
Sakharam S/o Digambarrao Mahajan,
Age : 75 years,
R/o 53, Bhagyanagar, Nanded.

2. Pratibha Niketan High School,
Kailasnagar, Nanded,
Through its Head Master,
Nanded.

3. Sau. Swapna Ashok Patole.

4. Shivaji S/o Rangrao Mahadwad.

5. Raviraj S/o Dashrathrao Shirse,

3 to 5 Age - Major, Occu. Assistant Teachers,
Working at Pratibha Niketan High School,
Kailasnagar, Nanded. **... Petitioners**

Versus

1. The State of Maharashtra,
Through Secretary, Secondary Education Dept.,
Mantralaya, Church Gate, Fort,
Mumbai - 32.

2. The Chief Executive Officer,
Zilla Parishad, Nanded.

3. The Zilla Parishad, Nanded,
Through its Education Officer (Sec.),
Nanded. **... Respondents**

WITH

CIVIL APPLICATION NO.11473 OF 2019

IN WP/1559/2018

(Pratibha Niketan Education Society, Through its General
Secretary and another Vs. The State of Maharashtra & others)

WITH

CIVIL APPLICATION NO.12237 OF 2019

IN WP/1559/2018

(Pratibha Niketan Education Society, Through its General
Secretary and another Vs. The State of Maharashtra & others)

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Advocate for Petitioners/Applicants : Mr. S. M. Kulkarni
AGP for Respondents-State : Mr. S. B. Yawalkar.

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WITH

WRIT PETITION NO.5182 OF 2021

1. Swapna D/o Ashok Patole,
Age : 35 years, Occu. Service,
R/o Yeshwant Nagar, Ext. Nanded,
Tq. & District Nanded.
2. Shivaji S/o Rangrao Mahadwad,
Age : 29 years, Occu. Service,
R/o Vishal Nagar, Nanded,
District Nanded.
3. Raviraj S/o Dashrath Shirse,
Age : 32 years, Occu. Service,
R/o Swami Vivekanand Nagar, Nanded,
Tq. & District Nanded. ... **Petitioners**

Versus

1. The State of Maharashtra,
Higher Education Department,
Through its - Secretary.

2. Education Officer (Secondary),
Nanded Zilla Parishad, Nanded,
Tq. & District Nanded.
3. Pratibha Niketan Education Society,
Through its - Secretary at Nanded. ... **Respondents**

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Advocate for Petitioners : Mr. A. B. Kharosekar h/f
Mr. O. B. Boinwad.

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

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

DATE : 18.11.2021

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule returnable forthwith. By the consent of respective lawyers for the parties, both the petitions are heard finally.
2. Heard the Learned Counsel Mr. S.M. Kulkarni for the petitioners and learned Additional Government Pleader Mr. S. B. Yawalkar for respondents at length.
3. By these petitions, the petitioners have impugned the order of respondent No.3 dated 06.03.2017, refusing the approval to the appointment of petitioner Nos.3 to 5 as

teachers and permission to advertise for the recruitment of 21 posts. The impugned order is passed by assigning the reasons that the permission dated 18.05.2011 was granted to fill up 13 posts in the academic year 2011-12 but, petitioner Nos.3 to 5 were selected in the academic year 2013-14 as well as the Government has banned the new recruitment by Government Resolution (G.R. for short) date 02.05.2012 as many surplus teachers in the District are yet to be absorbed.

4. Petitioner/society No.1 is a public trust. It runs the schools and junior college at Nanded. The petitioner/society, by application addressed to the respondent dated 20.04.2010, requested to accord permission to fill up 13 posts in the schools run by it. By order dated 18.05.2011, respondent No.2 accorded the permission. The petitioner/society published the advertisement in the Newspapers. However, it could not get all 13 suitable candidates. On the same permission, the petitioner/society advertised on 21.06.2013 for the fourth time in three local Newspapers. In the fourth round of advertisement, petitioner Nos.3 to 5 were appointed as Assistant teachers by orders dated 23.08.2013, as teachers from other backward classes. On 10.09.2013, the

petitioner/society sent the proposal to respondent No.3 for the individual approval of petitioner Nos.3 to 5. Since there was no response to the request for approval, the petitioners made representations to respondent No.2 on 22.06.2013, 20.07.2013, 21.08.2013, and 10.10.2014. Lastly, respondent No.3 sent the communication dated 28.01.2014 informing the petitioner/society that six months had already been passed. Thus, approval cannot be granted. (No copy of said communication is placed on record.) The said communication prompted the petitioner/society to file writ petition No.6765/2015. In the said petition, respondent No.2 had admitted that the representation of the petitioner/society to grant permission to fill up 21 posts was pending. In the light of the admission of respondent No.2, the Hon'ble Division Bench of this Court directed the Chief Executive Officer, Zilla Parishad, Nanded, to decide the representation of the petitioners preferably, within four months. Respondent No.3 then passed the impugned order dated 06.03.2017.

5. The petitioner/society has a case that respondent No.2 had directed it to accommodate one Mr. B.L.Ade in its school. There was no post suitable for him in its school. However, he

had filed a Writ petition No.7920/2010. The petitioner/society had also filed another Writ Petition No.9132/2010, challenging the order of respondent No.2 directing to absorb Mr. Ade. The Hon'ble Bench of this Court had stayed the direction issued by respondent No.2 by its order dated 28.04.2011. The Hon'ble Division Bench of this Court had passed the order in the Writ Petition of Mr. Ade on 28.04.2011 that without prejudice to the rights and contentions of the parties, it will be open to respondent No.2 to absorb him in any other recognized school. In compliance with the said order, respondent No.3 granted the permission to fill up 13 posts by its order dated 18.05.2011 without prescribing any time limit, and there were no conditions as such. In the meantime, again the posts fell vacant, hence a new proposal for grant of permission dated 10.10.2014 was submitted with respondent No.3. Since no decision was taken, the above writ petition No.6765/2015 was filed, and the impugned order was passed. It is the contention of the petitioner/society that prescribing a time limit of six months and filling up the posts in the academic year 2011-12 were never the conditions, therefore, refusing the approval to the posts of petitioner Nos.3 to 5 is arbitrary and prejudicial to

their interest. The respondents took a strange stand. The petitioner Nos.3 to 5 are teaching without salary from the day of their joining and on the brink of starvation. The impugned order is unjustifiable. Hence, liable to be set aside and respondent No.3 be directed to accord the approval to the appointments of petitioner Nos.3 to 5 and permission to fill up 21 posts.

6. The Respondents in both the petitions have strongly opposed the petitions. It is objected that the petitioner/society had no right to advertise and recruit the posts on the basis of permission dated 18.05.2011. After the first attempt failed to fill the vacancies, the petitioner/society had to get a fresh permission from respondent No.3. But it illegally continued to publish advertisements in the newspaper. The petitioner/society has deliberately committed serious illegality by recruiting petitioner Nos.3 to 5. Every year, there used to be new surplus teachers in the District. The surplus teachers are to be absorbed on priority. The acts of the petitioner/society are in defiance of the directions under the laws and the various G.Rs. The impugned order is legal and free from any infirmity. Therefore, the petitions deserve to be dismissed.

7. The learned counsel for the petitioner/society has explained that it did not find suitable candidates, hence, the advertisements were repeated. In the fourth advertisement, it finds petitioner Nos.3 to 5. Hence, they are appointed. The order dated 18.05.2011 did not prescribe the time limit to recruit candidates to the posts available. The petitioner/society has not violated any law, rule or G.R. In addition, it is also his arguments that, it is not justifiable on the part of respondent No.2 to retract its own order dated 18.05.2011 and impose a condition of 6 months for recruitment of the teachers vide its communication dated 28.01.2014. He would further argue that the petitioners Nos.3 to 5 are without salary for the last 4 years and are on the brink of starvation. He also took the support of the orders passed in the earlier writ petitions.

8. Per contra, the learned Govt. pleader has vehemently argued that the respondents have a specific plea that the institution running the school/s has to seek the prior permission to issue advertisement to fill in the vacancies. It is the power of the education department to grant the permission. It is the supervisory Authority of all the schools

under its jurisdiction. The permission to fill up the posts was only for the academic year 2011-12. Though the petitioner/society was aware of the law and rules, it deliberately appointed petitioner Nos.3 to 5 with ulterior motive.

9. It is not a matter of dispute that the petitioner/society had approached this Court under writ petition No.6765/2015. The Hon'ble Division Bench of this Bench, while disposing of the said petition, has observed thus;

"2. It is recorded in the affidavit-in-reply tendered by the State Government that the proposal for filling-up twenty one vacant posts is pending for consideration of the Chief Executive Officer, Zill Parishad, Nanded. It would be open for the Chief Executive Officer to take a decision in this regard as expeditiously as possible and preferably, within a period of four months from today.

3. So far as the grievance raised in the instant petition is considered, it is not necessary to consider the same at this stage. Keeping the option open of the petitioners to avail of the alternate remedies for redressal of their grievance open, if it would survive after the decision by the Chief Executive Officer as directed above, the petition stands disposed of."

10. It depicts from the order of the Hon'ble Division Bench of this Court that the plain directions were issued to the Chief

Executive Officer, Zilla Parishad, Nanded, to decide the proposal to recruit 21 posts pending before it. A copy of the proposal dated 10.10.2014 is placed on record below Exh-P-4. In the said proposal, there is no mention of earlier permission dated 18.05.2011 to fill up 13 posts. It further clears that the Hon'ble Division Bench of this Court in writ petition No.6765/2015 did not touch any of the relief except to expedite the proposal of the petitioner/society to fill up 21 posts. The Court had granted the liberty to seek redressal of the grievance if it survives.

11. Respondent No.3, by its communication dated 06.03.2017, informed the petitioner/society that the proposal to grant permission to fill up 21 vacant posts is after 02.05.2012. Yet, the absorption of surplus teachers in the District has remained. Hence, the permission is refused. Further, by giving the reference to an application of the petitioner/society dated 18.05. 2011, it is communicated that permission was granted to fill up the post for the academic year 2011-12. However, the petitioner/society has filled-in the posts in the year 2013-14. As per the G.R. dated 02.05.2012, the recruitment of aided teacher is banned, and 187 Marathi,

02 Urdu medium teachers are surplus, and out of those 189 posts, orders to absorb 77 Marathi medium school teachers have been issued. Out of it, 31 teachers have been absorbed, and the remaining are yet to be absorbed.

12. In the light of the two separate points raised by the petitioner/society, we, therefore, are of the view that it would be appropriate to deal the issue of refusing the individual approvals of the teachers i.e. petitioner Nos.3 to 5 and the order denying the permission to fill up 21 posts by the impugned order dated 06.03.2017 separately.

13. So far as the appointment of the petitioners Nos.3 to 5 is concerned, the documents placed on record shows that the posts were advertised in three local newspapers dated 21.06.2013. The applications were scrutinized. The teaching skill test and interviews were held and the petitioner Nos.3 to 5 were selected following the selection procedure. The moot question is whether the petitioner/society was correct in issuing repeated advertisements till it got the suitable candidates on the basis of permission dated 08.05.2011.

14. Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (herein after referred to as "M.E.P.S. Act") imposes an obligation on the management that as soon as possible, the management shall fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified.

15. Why the condition to fill in the posts as soon as possible in the above section is inserted can be well understood by reading this Section together with Rule 9(9)(a) of the M.E.P. S. Rules, 1981, which reads thus;

"9(9)(a) - In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from other remaining categories in the order specified I sub-rule (7), and if no person from any other categories is available, the post may be filled in temporarily on an year to year basis by candidate not belonging to the Backward Class."

16. The object of the M.E.P.S. Act may further help to understand the significance of the above provisions. The object of the Act is to regulate recruitment and conditions of service of employees with a view to providing security and stability of service to enable them to discharge their duties towards the

pupils effectively and efficiently. The Bombay High Court had occasion to deal with the interpretation of Section 5 of the M.E.P. S. Act in the case of *Matoshri Ramabai Ambedkar Vidyarthi Vasatigruha Trust and another Vs. Bharat D. Hambir 2009 (2) Mh.L.J. 121*, the Hon'ble Division Bench of Bombay High Court, in paragraph No.5 of the said judgment, it is observed that the interpretation of Section 5 of the Act must be purposive-one that would attain the statutory object and not lead to the negation of statutory intent. The management is duty-bound statutorily to fill it up by appointing a duly qualified candidate on probation. The vacancy must be advertised to allow equal opportunity to equal candidates. A regular process of selection must be held. A duly qualified candidate has to be appointed. Temporary appointments can, by definition, be made when the vacancy is temporary. In such cases, the exigencies of education require that students must be imparted education and vacancy even for a short period will cause serious hardship.

17. The purport of Section 5 and rule 9(9)(a) is the regular appointment of teachers to protect the interest of the teachers and the students' education. Students' education is the

paramount consideration. Rule 9(9)(a) of M.E.P.S. imposes the obligations on the management to fill up the vacancies. If no candidates from a particular reserved category are available, the institution has to fill it up from the other backward category. If no candidate from any backward category is found, the candidate from open category shall be appointed temporarily on year to year basis. Proviso to Section 5 of the M.E.P.S. Act also imposes certain obligations on the institutions while recruiting the vacancies. It provides that the management shall, before filling any post, ascertain from the Education Officer or the Director of Education or any person authorized by him in this regard, except in the case of promotion, whether there is a suitable person available on the list maintained by him for absorption in other school. If such a person is available, the management is bound to appoint such a person. If no suitable teachers or non-teaching staff is available in the list then, the concerned Officer, by following the rules, may grant permission to fill-in the vacancies. The provisions of 'The Maharashtra State Public Services (Reservation for Scheduled castes, Schedule Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward

Category and Other Backward Classes) Act, 2004, ('Reservation Act 2004' for short), shall be followed in the public services to accomplish the goal of equal opportunities. The Government imposes the conditions on the institutions to fill in the posts of backward classes. To have a record of such reserved post, every institution has to maintain the Roster Register. Every institution has to get it verified from the B.C. Cell periodically at least before applying for permission to fill up the vacancies. The reason is obvious that every year the roster may vary. The number of surplus teachers may increase or reduce every year. The list of the surplus teachers is to be maintained by the Education Officer or the Director of Education, as the case may be. The reason is that the workload of teaching staff depends on the strength of students and classes in the school. The strength and number of classes may also change or fluctuate as sometimes the schools are de-recognized, the teachers are retrenched or posts are abolished. These are the aspects to be considered, hence the management has to ascertain every time of recruitment whether any such person suitable to the post to be filled in is available in the list of surplus teachers. This is to be done regularly.

18. The proviso to section 5 of the M.E.PS Act as discussed above, providing for the first preference to the surplus teachers, clears the legislative intent that if the posts are advertised, the posts of teacher shall be filled in as soon as possible i.e., in and for the said academic year. It again supports the purpose of the Act, i.e. to make the prompt arrangement to impart uninterrupted education to the students by appointing the teachers. So logically, it appeals to the mind that the permission granted by the Education Officer / Director of Education was for the period of the academic year only. That apart the order granting permission dated 08.05.2011 specifically mentions that the permission to fill in the posts as mentioned below, is granted for the year 2011-12. It was again reiterated in the impugned order. The petitioner/society acted upon the order granting permission and never questioned its contents. The recruitment of the posts is subject to the permission of the concerned Education Officer. Therefore, the institutions are bound by such orders/permissions. No management shall take it for granted and continue for years together to advertise and invite the aspirants for the posts to

be filled in on the basis of permission granted by the concerned Officer for a specific year.

19. The learned counsel for the petitioner/society, further relying on the G.R. dated 24.08.2018, which was issued after the judgments in various writ petitions, has added that while scrutinizing the proposal for individual approval to the posts, the concerned Officer shall give a hearing to the management and teachers. He has to accord approval to the posts of English, Science, and Mathematics teachers, verifying that no teachers in the said subjects are surplus in the District. In the case of reserved posts, the extension granted by General Administration Department resolution dated 13.04.2011 and extended after that from time to time shall be borne in mind and then take the actions filling up such posts.

20. Time and again, the State Government has issued various G.Rs. to bring the transparency in the recruitment of the teachers. However, the management keeps on playing tactics of the favouritism and nepotism. There were many checks and balances, but the management of many schools is seen disobeying them deliberately. In the case of ***Datta***

Education Society Vs. The State of Maharashtra and others, 2016 (6) ALL.M.R. 387, (Aurangabad Bench) a strange fact came before the Court that, to accommodate the relative of the person from management, the advertisement was published in such a newspaper, which was not even registered in the said District. Though the regulations were framed by the Government, the management continued playing such tactics. Lastly, to have transparent recruitment, the Government has introduced the PAVITRA portal. Every management desirous of recruiting the teaching staff has to place its requirement through advertisement on that portal. The eligible and willing candidates opt for the posts vacant in the various institutions. The management has to appoint a candidate who has registered on the said portal.

21. Respondent No.3, by its letter dated 28.01.2014, had informed the petitioner/society that the post had to be filled within six months from the date of permission. Instead of refusing the individual approval to the posts of petitioner Nos.3 to 5, he had directed the petitioner/society, to submit the copy of schedule-I and the roster. There is no whisper about its compliance in the petition.

22. The petitioner/society has placed on record a document/application dated 20.07.2013 and tried to show that it had brought to the knowledge of respondent No.3 that the fourth time the posts are advertised and it is about to fill in the posts on the basis of permission dated 18.05.2011. It is titled 'In regard to the permission to fill up the vacant posts of the teachers'. In the body of the said application, it is mentioned that earlier, the permission was granted by letter dated 18.05.2011 to fill up the vacancies of 13 posts of teachers by the office of respondent No.3. It did not get the suitable candidates. Hence it opted to select the candidates from the fourth advertisement. This appears an attempt by the petitioner/society to avoid the permission from respondent no.3 and play a mischief.

23. The petitioner/society has tactfully avoided pleading that what happened finally in the writ petition No.7920/2010 filed by Mr. Ade and writ petition No.9132/2010 filed by it. The petitioner/society quickly added that after complying with the orders of the Hon'ble High Court, respondent No.3 released the approval on 18.05.2011 to fill up the 13 posts.

Yet, no statement is made in the petition what is the final result of the writ petition No.7920/2010.

24. The petitions lack pleadings on various material facts. The clever drafting attempt failed. Such incomplete petition itself is the evidence that the petitioner/society had ill-motive in avoiding the prescribed procedure to fill up the posts of teachers. We have no hesitation in observing that the petitioner/society tactfully did not to publish the advertisement in a widely circulated newspaper. The posts were advertised in the newspapers which would be rarely known to the public. Considering all these aspects and the conduct of the petitioner/society, we are of the opinion, that every act done by the petitioner/society is deliberate and intentional. The explanation that suitable candidates were not available is most unbelievable and indigestible in the world of huge unemployment. The overall conduct of the petitioner/society appears suspicious. It seems to have played mischief. Its conduct is not less than fraud.

25. Respondent No.3, while granting permission dated 18.05.2011 to advertise the 13 posts, had explicitly permitted

to fill up the posts for the year 2011-12. He again reiterated the same reason in the impugned order. The period to advertise and fill up the posts and appointments was in clear terms. The permission was only for the year 2011-12. The petitioner/society had started the recruitment process of petitioners Nos.3 to 5 after 2011-12 without seeking further permission to fill up the posts. Hence, they cannot seek the benefit of the G.R. dated 04.09.2013. The petitioner/society cannot travel beyond the permission granted by respondent No.3. The petitioner/society has avoided the filling up of the vacancies as provided under Section 5 of the M.E.P.S. Act and Rules. Therefore, we do not find any mistake committed by respondent No.3 in refusing the individual approvals to the appointments of respondents Nos.3 to 5.

26. So far as the refusal of the permission of 21 posts is concerned, the learned counsel for the petitioner/society has vehemently argued that there was no ban as per G.R. dated 02.05.2012. He has referred to the G.R. dated 04.09.2013 and argued that the ban was partially lifted as per the said G.R. and the posts of English, Mathematics, and Science teachers were allowed to be filled up.

27. The above G.R. provides that no permission to fill up the post of the teachers of the above subjects shall be given unless 100% absorption is done. The recruitment of the vacant posts shall be as per reservation policy and the procedure prescribed. It must be verified that the posts are from sanctioned posts only. The ban was not applicable to the selection process if it is started before 02.05.2012. Besides the above G.R., the State Government has issued the guidelines vide G.R. dated 06.02.2012, for the appointment, individual approval, promotions, and incidental matters in regard to the teaching and non-teaching staff. The concerned Officer shall grant permission to advertise the posts to the management under clause B of the said G.R. on the condition that the management shall mention in the advertisement the class for which the post is reserved, the educational qualifications (with medium and subject), upper age limit, whether the post is a full time, part-time, hourly basis, or leave vacancy, whether the post is aided, unaided, permanent unaided, post is as per the roster and other relevant terms and conditions. All these details are to be furnished by the management to the

concerned Officer, so the Officer may accommodate the surplus teacher/s if available on the list maintained by him.

28. The petitioner/society had submitted the proposal for permission to advertise the post addressed to respondent No.3 for 21 posts on 10.10.2014. In the said proposal, the complete information and details as required under the G. R. dated 06.02.2012, are not supplied. However, it is mentioned therein that 3 posts of English subject with Sanskrit, Geography, and 8 posts of science, and 5 posts of Mathematics, are vacant. The reservation of various castes is also given as per the roster. However, it is not given subject wise.

29. The question is, can the permission to fill up the posts be out rightly denied by respondent No.3 on the reason that the Government had banned the recruitments under G.R. dated 02.05.2012 ?

30. The above question is answered by the Bombay High Court in the case of *Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra, Writ Petition No.8587/2016* dated 07.09.2018 that the conditions of G.R. dated 02.05.2012 are not applicable to the three categories i.e. (i) the recruitment

process was initiated prior to 02.05.2012, (ii) the posts of the English, Mathematics, and Science subjects, and (iii) the posts are for reserved categories. The High Court of Bombay of this bench has reiterated in a case of ***Sunil Rajendra Fawade Vs. The State of Maharashtra and others, Writ Petition No.5223/2018*** decided on 17.12.2018 in paragraph No.4 that, the State has imposed a ban on recruitment of assistant teachers vide G.R. dated 02.05.2012 till 100% absorption of the surplus teachers. However, by G.R. dated 04.09.2013 itself, the ban has been relaxed as far as the English, Mathematics, and Science teachers are concerned.

31. It was the responsibility of respondent No.3 to inform or send the surplus teachers available in the District, Region, or the State as per the above G.R. to the school of the petitioner/society. It is the duty of the Education Department to appoint the surplus teachers scrupulously. Respondent No.3 in the impugned order has mentioned that yet, the absorption in the District is remained but has not clarified that which subject teachers are surplus or whether the suitable surplus teachers were available to be appointed in the school of the petitioner/society. To date, no comment on this point has been

made by respondent No.3. For these reasons, we find that the impugned order to that regard is unreasoned. Hence, liable to be partly set aside.

32. Reverting back to the individual approvals to the appointments of petitioner Nos.3 to 5 is concerned, we are of the opinion that, respondent No.3 has assigned the correct reason. We have observed the conduct of the petitioner/society in the above paras. The illegality is apparently committed by the petitioner/society. Appointments of petitioner Nos.3 to 5 are after the G.R. dated 02.05.2012 as well as without seeking permission from respondent No.3. Though they belong to the backward classes and appointed as mathematics and science teachers, it is in contravention of the prescribed procedure of appointing/filling up the vacancies. However, the record does not reveal that the petitioners Nos.3 to 5 have participated in the illegalities committed by the petitioner/society. There is nothing on record to believe that petitioner Nos.3 to 5 have played a fraud and misrepresented the authority in securing the job. On the contrary, they have faced the selection process of competing with equals, and then they were selected. They have been serving with the petitioner/society since 2013

without salary. They must have families and be burdened with financial responsibilities. They might have lost their job prospects either by overage or the qualification.

33. On the above premise, it is to be considered whether the Court may exercise the discretionary jurisdiction under the principle of equity in their favour. He who claims equity must come with clean hands. The doctrine of equity relates to the past conduct of the parties. It must be established that the party claiming equity must not have been involved in an inequitable act himself in the past. If such a person is involved in fraud or misrepresentation that concerns the respective case, then he cannot demand equity. Such a person must be fair and come with clean hands. We have observed above that the petitioner Nos.3 to 5 are not involved in the illegalities committed by the petitioner/society nor played any fraud or misrepresentation in securing the job. Hence, we are of the opinion that as an exceptional case, the petitioner Nos.3 to 5 are entitled to equity.

34. As soon as the job of petitioner Nos.3 to 5 is protected, and approval is directed to be granted by respondent No.3, the

question of their salaries from the date of the appointment emerges. The next question is who shall bear the financial burden. Normally, after granting individual approval, the salaries are paid from the Government Exchequer. But, this practice cannot be applied routinely, particularly where the management has made the mess deliberately. The employee has a statutory right to get the remuneration for the work from the employer. The petitioner Nos.3 to 5, who have been giving their services for last eight years shall get the salary. The courts are not supposed to protect the interest of individuals only but have also to protect the interest of the Government. Having regard to our observations on the conduct of the petitioner/society, we are of the considered view that the Government Exchequer shall not be burdened for the wrongs committed by the petitioner/society. As per the G.Rs., also the responsibility is imposed on the management, if the appointment is in contravention of the law and rules. Hence, we are also of the opinion that petitioner/society shall pay the salaries of petitioner Nos.3 to 5 from the date of their appointment till December, 2020.

35. In view of the above, we pass the following order :

ORDER

- (A) Both writ petitions are partly allowed.
- (B) The impugned order dated 06.03.2017 refusing the individual approval to the petitioners in writ petition No.5182 of 2021 and petitioner Nos.3 to 5, who are same in writ petition No.1559 of 2018 is set aside.
- (C) Respondent No.3 is directed to accord the individual approval to the above petitioners and, on receipt of the salary bills from the petitioner/society, grant them salary from January 2022 onwards as an exceptional case.
- (D) The petitioner/society in petition No.1559/2018, and respondent No.3 in Writ Petition No. 5182/2021, shall pay the salary to the petitioners and petitioners Nos.3 to 5 from the date of their joining till December 2021 with simple interest @ 8% per annum from the date of their appointments till realization.

- (E) The petitioner/society shall pay the salaries of petitioner Nos.3 to 5 in Writ Petition No.1559 of 2018 by depositing the same in their bank account in three equal installments of six months each.
- (F) The impugned order, refusing the permission to advertise 21 posts, is partly set aside.
- (G) Respondent No.3 is directed to reconsider the proposal of petitioner/society dated 10.10.2014 strictly in accordance with the G.Rs. dated 04.09.2013 and 06.02.2012 within three months from today.
- (H) The petitioner/society shall furnish the complete information to respondent No.3 as required under the law, rules and various G.Rs. for considering the permission to fill up the vacancies of 21 posts if permissible as per the current roster.

36. Rule made absolute, in the above terms.

37. Civil Application No.11473 of 2019 seeking amendment, is allowed. Amendment be carried out forthwith.

38. The learned advocate for the petitioners prays for leave to withdraw Civil Application No.12237 of 2019. Leave granted. Civil Application is disposed of as withdrawn.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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