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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13514 OF 2018

Vaishali Raghunath Agale

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

Mr. Shivaji T. Shelke, Advocate for the petitioner

Mr. S. N. Kendre, AGP for respondent - State

Mr. S. S. Wagh, Advocate for respondent No. 4

[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]

DATE : 2nd MARCH, 2021

ORDER :

1. Petitioner questions validity of communication dated 8th April, 2018 in response to proposal submitted for approval to her appointment. The same purports to decline granting approval to appointment of the petitioner, for there had been no approval camp, recruitment procedure under government resolution dated 6th February, 2012 had not been followed and communications by Commissioner of Education dated 16th January, 2017 and 29th August, 2017 as well as government circular dated 8th August, 2017 prohibit new recruitment and that there has been procedure for recruitment and recruitment procedure prescribed

pursuant to government resolution dated 23rd June, 2017 would have to be followed.

2. Mr. S. T. Shelke, learned advocate appearing for the petitioner submits that impugned communication is untenable, it is contrary to facts and bad in law. He submits that not holding of approval camp would hardly be a ground on which proposal for approval to appointment can be declined. He further submits that proper recruitment procedure had been followed, as it would emerge from record that employer institution in fact had solicited permission for issuing advertisement to fill in the vacant post and position of vacancy was got verified from backward class cell, Nashik regarding backlog, as would be seen from communication dated 12th April, 2017 and there had been no impediment for appointment of petitioner and accordingly advertisement had been issued and thereafter selection procedure had been followed. Petitioner had been selected on merits and had been appointed. He submits that the concern of respondents appears to be that unless and until backlog of surplus teachers is wiped out, recruitment procedure appointing new person would not be approved. He submits that in fact it would emerge that for the post, which the petitioner occupies, no surplus teacher had ever been sent by the education officer

from 2017 till date. He submits that it would also emerge that there were about three hundred fifty one vacant posts of assistant teachers in Ahmednagar district and in only two posts surplus teachers were accommodated. He further refers to that before issuing advertisement, permission had been solicited, position of vacancy had been got verified from Nashik region backward cell. He further submits that communication dated 31st January, 2019 to one Mr. Palve Kumar Bhagwan by Superintendent Class – II Education (Secondary), Zilla Parishad, Ahmednagar would show that in the academic year 2017-18, there were about twenty two surplus teachers and that there were five hundred seventy seven posts of assistant teachers vacant. He submits that having regard to aforesaid, reasons given under the impugned communication are untenable and the petition deserves to be allowed, directing the respondents to grant approval to appointment of the petitioner.

3. Learned AGP Mr. Kendre appearing for the respondents purports to resist the request under writ petition referring to various communications as referred to in the impugned communication and submits that having regard to the directives, as referred to in the communications and government resolution dated 16th January, 2017 and circular dated 8th August, 2017,

impugned communication would not be liable to be faulted with.

4. However, factual situation as is stated as appearing from communications dated 31st January, 2019 (Page 71) as well as dated 21st November, 2017 (Page 18) if is not disputed and further that while the education officer is stated to be present instructing learned AGP, it appears that vacancies are available and that no surplus teacher had ever been sent to the employer institution after its communication of 2nd May, 2017 and all through to date.

5. In the circumstances, reasons which appear to have weighed while issuing impugned communication do not appear to be sustainable in the emerging scenario. It appears that there had been no intention to have accommodation of surplus teachers. However, position as would emerge from communications dated 31st January, 2019 (Page 71) as well as dated 21st November, 2017 (Page 18) and that being not refuted, vacancies outnumber surplus accommodation by very wide and multiple margins, it depletes the rationale in the impugned communication and communications referred to above do not match.

6. Writ petition, therefore, succeeds. Impugned

communication dated 8th April, 2018 passed by respondent No. 3 is set aside. Proposal submitted for approval to appointment of petitioner is revived for reconsideration before respondent No. 3 – Education Officer for appropriate orders without declining the same for the reasons in impugned communication. We expect that proper and appropriate orders would be passed by respondent No. 3 within a span of eight weeks from the date of receipt of writ of this order. Writ petition accordingly is disposed of.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE