

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5320 OF 2019

Nita Pandurang Chavan
Age : Adult, Occupation : Service,
Resident of Kasba Walva,
Taluka Radhanagari, District Kolhapur.

...Petitioner

V/s.

1. State of Maharashtra,
Through Department of Education
Having office at Mantralaya, Mumbai.
2. Deputy Director of Education,
Kolhapur, District Kolhapur.
3. Walwa Education Society,
Walwa Budruk, Taluka
Radhanagari, District Kolhapur.
4. Raghunath New English School And
Junior College, District Kolhapur.

...Respondents

WITH
WRIT PETITION NO.3496 OF 2021

Ajay Rangrao Patil

...Petitioner

V/s.

1. State of Maharashtra,
Through Department of Education
Having office at Mantralaya, Mumbai.
2. Deputy Director of Education,
Kolhapur, District Kolhapur.

3. Walwa Education Society,
Walwa Budruk, Taluka
Radhanagari, District Kolhapur.
4. Raghunath New English School And
Junior College, District Kolhapur. ...Respondents

Mr.Chetan G. Patil for the Petitioners in both the Writ Petitions.

Ms.Kavita N. Solunke, AGP for the State – Respondent Nos.1 and 2.
in Writ Petition No.5320 of 2019.

Mr.N.K. Rajpurohit, AGP for the State – Respondent Nos.1 and 2 in
Writ Petition No.3496 of 2021.

CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.
DATE : 9TH SEPTEMBER, 2021.

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :-

1. By an order dated 30th July, 2021, this Court had made it clear that Court will make an endeavour to dispose of the writ petitions finally at the admission stage, subject to time constrain and no further adjournment would be granted. None appeared for the respondent nos.3 and 4 when these writ petitions were called out. No affidavit in reply has been filed by them.

2. We have accordingly heard the learned counsel for the petitioners and the learned AGP for the respondent nos.1 and 2. Leaned counsel for the parties jointly state that the facts in both the writ petitions and the issue of law involved are identical and can be disposed of by a common order. Both the writ petitions were

accordingly heard together and are disposed of by a common order.

3. The petitioner in Writ Petition No.5320 of 2019 was appointed on the post of Shikshan Sevak on 15th June, 2016 with the respondent no.4 school after following due procedure. On 15th June, 2016, the management submitted a proposal for seeking approval to the appointment of the petitioner to the respondent no.2. It is the case of the petitioner that all the queries raised by the respondent no.2 on the said proposal were satisfied. The respondent no.2 however, vide letter dated 4th September, 2019 rejected the said proposal on four grounds i.e. (i) advertisement is not published in two newspapers, cutting of two newspapers is not submitted, (ii) no permission of advertisement was obtained, (iii) there is no caste certificate and caste validity certificate and (iv) there is dispute in the management.

4. The petitioner in Writ Petition No.3496 of 2021 was appointed on 1st August, 2014 as Shikshan Sevak in the respondent no.4 school. The management thereafter submitted a proposal for seeking approval to the said appointment on 15th June, 2016. It is the case of the petitioner that all queries raised by the respondent no.2 were satisfied. The respondent no.2 however, passed an order on 4th September, 2019 rejecting the said proposal for approval to the appointment of the petitioner to the post of Shikshan Sevak on three

grounds. (i) No permission was obtained by the petitioner before issuing any advertisement. The advertisement was not published in two newspapers and (iii) No caste certificate and caste validity certificate were issued.

5. Mr.Patil, learned counsel appearing for the petitioners states that the petitioner was appointed against the reserved category of OBC. The petitioner had already submitted a caste certificate issued by the competent authority. The caste certificate was subsequently issued by the Caste Scrutiny Committee which was issued after rejection of proposal of the petitioner by the respondent no.2. He has produced a copy of the said caste validity certificate annexed to the additional affidavit filed on 18th March, 2021. He submits that the petitioner was not responsible for the delay on the part of the Caste Scrutiny Committee in issuing the said caste validity certificate.

6. It is submitted that the respondent no.2 thus could not have rejected the approval on the ground that the petitioner had not submitted the caste certificate or caste validity certificate. Insofar as the ground raised in the impugned order that there being a dispute in the management and thus no approval could be granted is concerned, learned counsel invited our attention to the letter annexed at page 26 of the writ petition addressed by the management to the

Deputy Director of Education stating that two of the complaints filed by the two persons had been already withdrawn and there was no dispute. He submitted that in any event on such ground, the Education Officer could not have refused to grant permission. He invited our attention to the judgment of this Court delivered on 16th December, 2016 in case of **Narsinha Shikshan Prasarak Mandal & Ors. vs. Education Officer (Secondary) Zilla Parishad, Kolhapur & Ors.** in Writ Petition No.1847 of 2012.

7. Insofar as the ground that the advertisement was not published in the paper having wide circulation is concerned, learned counsel would submit that the management had issued an advertisement in the leading newspaper Maharashtra Times having wide circulation. He placed reliance on Rule 9(8) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and would submit that the management having issued the advertisement before appointing the petitioner to the post of Shikshan Sevak and having published in the newspapers having wide circulation, there was compliance of Rule 9(8) of the said MEPS Rules.

8. It is submitted by the learned counsel that even otherwise the Deputy Director of Education vide communication letter dated 7th April, 2019 addressed by the Director of Education (Secondary) to all

the Deputy Directors has directed that after 2nd May, 2012 if the appointments were not made without obtaining prior permission of the Education Officer to issue advertisement, approval shall not be rejected.

9. It is submitted by the learned counsel that even otherwise the purpose of issuing such advertisement for the knowledge of surplus teachers has been served. He submits that it is not the case of the respondent nos.1 and 2 in the affidavit in reply that there was any surplus teacher who had made complaint for the alleged non-compliance of the requirement of prior consent of the Education Officer or that such surplus teacher was not appointed on the said post.

10. Learned counsel for the petitioner invited our attention on the judgment of this Court delivered on 10th July, 2017 in Writ Petition No.5587 of 2016 with connected writ petitions filed by **Smt.Munoli Rajashri Karabasappa vs. State of Maharashtra, through Secretary & Ors.** and would submit that this Court in the said judgment had issued three directions which are required to be complied with by the Education Officer while examining an individual approval. He submits that the reasons recorded by the Education Officer in the impugned order are beyond the directions issued by this Court in the said judgment.

11. Mr.Rajpurohit, learned AGP for the respondent nos.1 and 2 in Writ Petition No.3496 of 2021 and Ms.Solunke, AGP for the respondent nos.1 and 2 in Writ Petition No.5320 of 2019 invited our attention to the affidavits in reply filed by the respondent nos.1 and 2 and would submit that for the grounds raised in the affidavit in reply, the petitioner has not made out any case for setting aside the impugned order passed by the Education Officer. It is submitted by the learned counsel that under Rule 9(8) of the MEPS Rules duly substituted with effect from 22nd June, 2017, the petitioner ought to have notified the vacancy to the Employment Exchange of the District and to the District Associate Welfare Officer and to the Association or Organization of persons belonging to the backward classes. The petitioner has allegedly not complied with the said requirement under Rule 9(8).

12. Mr.Patil, learned counsel for the petitioner submits that the approval to the appointment of the petitioner has not been rejected on such ground and the said ground cannot thus be allowed to be urged across the bar.

13. Insofar as the ground that there was dispute in the management in the impugned order is concerned, the management had brought to the notice of the respondent no.2 by a letter dated 28th February, 2019 that the complaint filed by two of the persons were

already withdrawn. Be that as it may, this Court in the judgment in case of **Narsinha Shikshan Prasarak Mandal & Ors.** (supra) after adverting to the earlier judgment in case of **Dr.Ishrat Ullah Khan& Ors. vs. The State of Maharashtra & Ors.** in Writ Petition No.4474 of 2012 held that the Education Officer is not required to go into the inter-se dispute between the management. He is required to see as to whether the teacher was entitled for grant of approval or not. By the said judgment, this Court was pleased to set aside the impugned order and to remand the matter back to the Education Officer with a direction to decide the matter of approval of the appointment of the petitioner employee afresh.

14. In our view, the said judgment of this Court in case of **Dr.Ishrat Ullah Khan& Ors. vs. The State of Maharashtra & Ors.** applies to the facts of this case. Even if there is any dispute between the management inter-se, that cannot be a ground for rejection of the approval to the appointment of the teaching or non-teaching staff by the Education Officer. In our view, the reasons recorded by the respondent no.2 in the impugned order rejecting the approval on the ground that there was internal dispute between the management is contrary to law laid down by this Court.

15. A perusal of the record further indicates that the petitioner had already submitted the caste certificate issued by the competent

authority. The said caste certificate was referred to the Caste Scrutiny Committee which was validated on 8th May, 2019. The respondent no.2 thus could not have rejected the approval on that ground. The petitioner was not responsible for the delay on the part of the Caste Scrutiny Committee in issuing caste validity certificate which remained pending for quite some time. In our view, the advertisement issued by the management in the newspaper Maharashtra Times is in compliance with Rule 9(8) of MEPS Rules. The newspaper Maharashtra Times has wide publication in the State of Maharashtra. There is thus no substance in this reason recorded by the respondent no.2 in the impugned order.

16. In our view, the impugned order is totally erroneous on all grounds and thus deserves to be set aside. We accordingly pass the following order :-

a). The impugned orders dated 15th May, 2017 and 4th September, 2018 are quashed and set aside in both the Writ Petition Nos.5320 of 2019 and 3496 of 2021. The respondent no.2 – Deputy Director of Education is directed to grant approval to the appointment of the petitioner in both the writ petitions on the post of Shikshan Sevak with effect from the date of initial appointment i.e. 15th June, 2016 in Writ Petition No.5320 of 2019 and with effect from 1st August, 2014 in Writ Petition No.3496 of 2021 within four weeks from the

date of communication of this order.

b). The respondent no.2 shall also release grant-in-aid in respect of such appointment in favour of the management within six weeks from the date of grant of such approval, without fail. The respondent no.2 shall include the name of the petitioner in both the writ petitions in Salarth ID within four weeks from the date of grant of approval.

c). Both the writ petitions are allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs. The parties to act on the authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)