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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3707 OF 2018

Rajendra Bhimrao Jadhav

...Petitioner

Versus

President / Secretary
Agrani Shikshan Prasarak Mandal

...Respondents

Mr. Kishor Patil, i/b. Mrs. Aarti P. Bhide for the Petitioner.
Mr. Vikas Mali, AGP for State – Respondent Nos.3, 4 and 7.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 17 AUGUST, 2021

ORDER :

1. Rule. Learned AGP waives service on behalf of Respondent Nos.2, 4 and 7. Respondent Nos.1, 2, 5 and 6 though served remained absent. No reliefs are sought against those Respondents. Hence by consent of parties Petition is heard finally.

2. The Petitioner has filed this Petition under Article 226 of the Constitution of India *inter alia* praying for quashing

and setting aside the order dated 4th April, 2019 passed by the Respondent No.3 rejecting proposal for the approval of the appointment of the Petitioner for the post of shikshan sevak. The Petitioner has also prayed for a writ of mandamus against Respondent Nos.1 to 4 to approve the proposal of the Petitioner for the said post as Shikshan Sevak and appoint the Petitioner as permanent Assistant Teacher on the clear and permanent vacancy in the Respondent No.1 school.

3. The Petitioner is M.A., ATD (Arts Teacher Diploma), Arts Master (A.M.) C.T.C. (Craft Teacher's Course) and 4th exam of Music. The Petitioner has qualifications as contemplated under Schedule B of MEPS Act and for appointment as Assistant Teacher and also Art Teacher.

4. On 5th July, 2012 the Petitioner was appointed as Shikshak Sevak under the scheme introduced for appointment of teacher in the secondary school in the State of Maharashtra. Respondent No.5 is another teacher working in the Respondent No.6 whose candidature has been approved by the Respondent Nos.3 and 4, who according to the Petitioner is similarly qualified and similarly situated.

5. The Petitioner is from OBC category. On 12th June, 2012, the Management issued advertisement in the local newspaper inviting applications for B.A./M.A./B.Ed or HSC, D.Ed / A.T.D. for one post each for OBC category respectively for the post of Shikshan Sevak. The said advertisement was published after seeking permission from Education Officer. Since, there was no response to the said request., the Management proceeded with the issuance of advertisement and process of appointment. The Petitioner was found suitable and was appointed on the said post. The said post had fallen vacant in view of the retirement of the earlier teacher on the said post. The Petitioner filed this Writ Petition *inter alia* praying for approval as Shikshan Sevak and for appointment of the Petitioner. During the pendency of this Petition, the Education Officer rejected proposal for approval of the Petitioner as Shikshan Sevak. Petitioner impugned the said order also.

6. Mr. Patil, learned Counsel for the Petitioner invited our attention to various annexures to the Writ Petition and would submit that the Management had followed the requisite procedure under the provisions of MEPS Rule, 1981 before

filling up the said post. He submits that the Petitioner belongs to OBC caste and was appointed on the post fallen vacant due to the retirement of earlier employee. He invited our attention to the impugned order dated 19th January, 2019 passed by the Education Officer rejecting the said proposal.

7. It is submitted by the learned Counsel that the impugned order passed by the Education Officer is totally contrary to the principles of law laid down by various judgments of this Court. He relied upon the (i) unreported judgment of this Court in Writ Petition No.8587 of 2016 filed by Smt. Munoli Rajashiri Karabasappa Vs. State of Maharashtra & Ors. and other companion matters, (ii) on the judgment of Division Bench of this Court in Writ Petition No. 10580 of 2015 along with companion Writ Petitions filed by Sou. Revati Kusha Wagh & Ors. Vs. The State of Maharashtra decided on 9th March, 2017 and (iii) on the judgment delivered by learned Single Judge on 14th October, 2020 in Writ Petition No.6744 of 2018 filed by Shri Vikram V. Mane Vs. The State of Maharashtra & Ors.

8. It is submitted by learned Counsel for the Petitioner

that, the Respondent No.5 whose case was similarly situated and who was employee of Respondent No.6 was approved by the Education Officer. However for the frivolous reasons, approval for the appointment of the Petitioner was rejected.

9. Learned Counsel for the Petitioner has invited our attention to the Affidavit in Reply filed by the Respondent No.3 and would submit that in paragraph 9 of the said Affidavit in Reply, it is contended by Respondent No.3 that the appointment of Assistant Teacher in a permanent cadre was outside the provisions of RTE Act, 2009.

10. Mr. Mali, learned AGP for State invited our attention to the averments made in some of the paragraphs in Affidavit in Reply. He also fairly invited our attention to the paragraph 6 of this Petition and would submit that, appointment of Art teacher as a permanent cadre falls outside the provisions of the R.T.E. Act of 2009.

11. We have heard the learned Counsel for parties and also perused the documents annexed to the Petition. We have also perused the Affidavit in Reply filed by the Management notorised on 1st September, 2018. The Management in the said

Affidavit states that, since the school was in need of drawing teacher, the Management sought to fill up the vacancies on urgent basis to avoid loss to the students. The Respondent No.3 did not reply to the letter dated 13th September, 2012 sent by the Management. The management followed the requisite procedure while appointing the Petitioner in the said post. It is further stated in the Affidavit in Reply that the conditions imposed in the letter dated 3rd July, 2017 and 12th July, 2017 of the Upper Secretary, State of Maharashtra and Education Director, State of Maharashtra directing absorption of surplus teacher are not applicable for the vacancies in Art subject and the Art being specialised subject qualified teacher is required to teach the same.

12. A perusal of the record clearly indicates that the post which was advertised by the Management was a post fallen vacant due to the retirement of one of the employee. The advertisement annexed to the Petition would clearly indicate that, said post was reserved for OBC candidate. It is not in dispute that the Petitioner belongs to OBC category.

13. The impugned order proceeds on the premise that

as per Government Resolution dated 2nd May, 2012, there was a ban for appointment of new teachers till the surplus teachers are absorbed. The impugned order totally overlooked the admitted position that, the said post on which the Petitioner was appointed has fallen vacant due to retirement of the erstwhile teacher. This issue has been dealt with by the Division Bench of this Court in the Judgment in the case of Smt. Munoli Rajashri Karabasappa (Supra). This Court after adverting to various judgments delivered by this Court in various judgments has held that, the said resolution is not applicable to the categories, (i) where the recruitment process has already commenced prior to the said GR dated 2nd May, 2012. (ii) In so far as the appointments made for the subjects of English, Maths and Science are concerned and (iii) where the recruitment is made to fulfill the backlog of reserved category candidates. Similar view is taken by another Division Bench of this Court in Sou. Revati Kusha Wagh & Anr. (Supra). In the said judgment the Division Bench of this Court adverted to the earlier judgment in the case of Ashok Nilkanth Dhale Vs. State of Maharashtra & Ors. 2016 (5) Mh.L.J, 742.

14. In our view the said Government Resolution dated

2nd May, 2012 will not apply in case of filling up of the vacancies having fallen vacant due to the retirement of an employee. Mr. Mali, learned AGP could not dispute that the Petitioner was appointed to the said post falling vacant due to retirement of the earlier employee. The judgments referred to above delivered by this Court will squarely apply to the facts of this case. We do not propose to take any different view in the matter.

15. A perusal of the record indicates that the Management has followed the requisite procedure before issuing advertisement for the post of Shikshan Sevak. However there was no response for the request. The State Government did not dispute the fact that the Petitioner was otherwise qualified and belonged to OBC. The impugned order passed by the Respondent No.3 on 4th April, 2019 is contrary to the principles of law laid down by this Court in case of Smt. Munoli Rajashir Karabasappa (Supra) and in case of Sou. Revati Kusha Wagh & Anr. (Supra) and thus deserves to be quashed and set aside. The appointment of Art teacher as a permanent cadre falls outside the provisions of RTE Act, 2009.

16. We accordingly pass the following order:-

(i) The impugned order dated 4th April, 2019 passed by Respondent No.3 rejecting the proposal for approval of the Petitioner as Shikshan Sevak is quashed and set aside.

(ii) The Respondent Nos.2 to 4 are directed to approve the proposal submitted by the Management for the appointment of the Petitioner as Shikshan Sevak from the date of appointment within six weeks from today without fail and shall communicate said order to the Petitioner and the management within one week thereafter.

(iii) The Respondent Nos.1 to 3 are directed to grant pay scale to the Petitioner as Shikshan Sevak for initial period of three years and thereafter for the post of Assistant Teacher. The arrears shall be paid by the Respondent Nos.1 to 4 within 12 weeks from today with interest at the rate of 8% from the due date till payment.

(iv) Writ Petition is disposed of accordingly in aforesaid terms. There shall be no order as to costs.

(v) Rule is made absolute accordingly.

(vi) Parties to act on an authenticated copy of this Order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]