

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5090 OF 2019

Kum. Ratnaprabha Ramesh More & Anr. .. Petitioners

v/s.

The State of Maharashtra, Through the
Secretary, School Education Department,
Mantralaya, Mumbai & Ors. .. Respondents

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Mr. N.V. Bandiwadekar, i/b. P.N. Bandiwadekar, for the Petitioners.

Mr. V.M. Mali-AGP, for the State-Respondent Nos. 1 and 2.

....

**CORAM: S.C. GUPTE &
SURENDRA P. TAVADE, JJ.**

DATE : 11 MARCH, 2021.

PC:-

. Heard learned Counsel for the Petitioners and learned AGP for the Respondent-State (Respondent Nos. 1 and 2). Rule. Rule taken up for hearing forthwith by consent of Counsel.

2. The Petitioner belongs to NT(B) category and holds the requisite qualifications including Teacher Eligibility Test (TET) for appointment as Shikshan Sevak. There were four vacant posts in the school run by Petitioner No.2. As per the reservation policy and the roster applicable, there were 4 VJNT seats, out of which three were filled-in and one post was available for allotment. Since Petitioner No.1 belonged to the VJNT category (being NT(A)) and there was a rule of

interchangeability within the category, Petitioner No.2 appointed Petitioner No.1 as Shikshan Sevak in the available post, which earlier was held by a permanent Assistant Teacher on aided basis, who retired from service. The appointment was sought to be made after submission of a requisition in that behalf to the Employment Exchange for sending a list of the qualified NT(B) candidates and also after due selection process including interviews of candidates. The Petitioner applied for that post and after interview, was selected for appointment. The school committee of the management, in its meeting held on 31 August 2012, passed a resolution appointing Petitioner No.1 as Shikshan Sevak from 1 September 2012 to 31 August 2015 in the H.Sc. D.Ed. post and an appointment order was issued accordingly to Petitioner No.1 (order dated 31 August 2012). The proposal sent for approval to the Petitioner's appointment was rejected by Respondent No.2-Education Officer, purportedly, on the ground of the ban on recruitment contained in the G.R. of 2 May 2012. Having regard to the view taken by this Court on the applicability of the ban of G.R. of 2 May 2012, vis-a-vis reserved candidates, a circular was issued by Respondent No.2 for re-submission of previously rejected proposals of reserved appointees on account of want of NOC in terms of the G.R. dated 2 May 2012. The proposal of Petitioner No.1 was, accordingly, re-submitted by Petitioner No.2 to Respondent No.2. By his impugned order dated 19 March 2019, Respondent No.2 once again refused to approve the appointment of Petitioner No.1 more or less for the same reasons as contained in his earlier order, including the applicability of G.R. dated 2 May 2012. Besides the G.R.; the other reasons given by Respondent No.2 for rejecting the proposal include, firstly, that an NT(B) candidate was already

appointed in one of the posts reserved for VJNT and that, accordingly, another NT(B) candidate in the reserved category of VJNT could not have been appointed. The other reason indicated was want of permission of the Education Officer before issuing the advertisement.

3. None of the reasons indicated by Respondent No.2 is of any merit. This Court has made it clear in a number of cases, including the case of **Smt. Munoli Rajashri Karabasappa v/s. State of Maharashtra and Ors. and other connected Writ Petitions**¹, that the restrictions in the G.R. of 2 May 2012, arising out of availability of surplus teachers, do not apply to appointments of candidates of reserved category. Insofar as the reserved category of the Petitioner, namely, NT(B), is concerned, it cannot be disputed that within the broad category of VJNT, there was interchangeability and a candidate NT(B) category could well have been appointed within the VJNT reservation. There is also no merit in the submission that no permission was taken before issuing the advertisement for selecting a candidate for the appointment.

4. Rule is, accordingly, made absolute by quashing and setting aside the impugned order passed by Respondent No.2 on 8/19 March 2019 and directing Respondent No.2 to grant approval to the appointment of Petitioner No.1 as Shikshan Sevak in the aided secondary school of Petitioner No.2 with all consequential benefits. Such orders shall be passed and disbursal of honorarium shall be made within a period of six weeks from today. Considering that Petitioner No.1 has already completed her probationary period of three years as Shikshan Sevak, Petitioner No.2 may also submit a proposal for regular appointment of

1. Order dated 10 July, 2017 in Writ Petition No. 8587 of 2017.

Petitioner No.1 as an Assistant Teacher in accordance with law. Such application shall be duly considered by Respondent No.2-Education Officer and appropriate order shall be passed thereon within a reasonable time.

5. The petition is disposed of in the above terms.

(SURENDRA P. TAVADE, J.)

(S.C. GUPTE, J.)