

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5851 OF 2019

PETITIONER:

Mahesh Puranlal Raut,
Aged about 39 years, Occ. Service,
R/o. Kakode, Tah. Deori,
Dist. Gondia.

...VERSUS...

RESPONDENTS: 1]

Ku. Rajani Vitthalrao Sakhare,
Occ. Service, R/o/ Sanjay Nagar,
Ward No.1, Deori, Tq. Deori,
Dist. Gondia.

2]

Shriram Vidyalaya,
through its Headmaster,
Chinchghar, Tah. Deori,
Dist. Gondia.

3]

Rashtriya Shikshan Sanstha,
through its President,
Lakhani, Dist. Bhandara.

4]

Education Officer (Sec.)
Zilla Parishad, Gondia.

5]

The Dy. Director of Education,
Nagpur Division, Nagpur.

6]

Alhad Digambarrao Bhandarkar,
aged 41, Occ. Business,
R/o. Gujari Chowk, Lakhni,
Dist. Bhandara

Mr.P.P.Thakre, Advocate for petitioners.

Mr. A.M.Gordey, Senior Advocate assisted by Mrs. R.D.Raskar,
Advocate for respondent No.1

Mr. V.A.Dhabe, Advocate for Respondent No.3
Ms. N.P.Mehta, AGP for Respondent No.4 and 5
Mr. M.M.Dhandekar, Advocate for Respondent Nos. 2 and 6

CORAM : AVINASH G. GHAROTE, J.
DATE : 23/12/2021.

1] Heard Mr. Thakre, learned counsel for the petitioner, Mr. Gordey, learned Senior Counsel for Respondent No.1. Mr. Dhabe, learned counsel for Respondent No.3. Mr. Dhandekar, learned counsel for Respondent Nos. 2 and 6. Ms. Mehta, learned AGP Respondent Nos. 4 and 5.

2] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3] The petition challenges the judgment dated 6.8.2019 passed by the learned School Tribunal in Appeal No. 18/2014 filed by the present Respondent No.1, in which the termination order dated 20.2.2014 of Respondent No. 1 has been quashed and set aside and Respondent No. 3 is directed to reinstate the Respondent No.1 with full back-wages and continuity within 30 days. A recommendation is also made under Section 11 (3) of the MEPS Act to the State Government.

4] Mr. Thakre, learned counsel for the petitioner submits that on 29.3.2012, the Education Officer granted permission to issue an advertisement for the post of Shikshan Sewak available with the Respondent No. 2, run by Respondent No. 3. On 21.4.2012, an advertisement was issued in the local daily Tarun Bharat inviting applications by qualified persons for the post of Shikshan Sewak (Secondary). The said post was reserved for Scheduled Caste candidate and it was stated therein that women candidates would be given preference. The petitioner as well as Respondent No. 1 in pursuance to the said advertisement had applied, in which after an interview, the petitioner was recommended by the Selection Committee in pursuance to which, after an interview, the petitioner was appointed by virtue of appointment order dated 4.5.2012.

5] On 25.7.2012, the Respondent No. 1 raised an objection to the appointment of the petitioner herein, contending that the post was reserved for Scheduled Caste women, which objection was rejected. On 8.8.2012, a complaint was filed by Respondent No.1 to the concerned Police Station alleging that the society had taken an amount of Rs. 17.5 lakhs, for the purpose of appointing the Respondent No. 1 as a Shikshan Sewak, in spite of which the appointment was not made, in which

complaint the then President of Respondent No. 3 society, when summoned, is stated to have made a statement that he would cancel the appointment of the petitioner and issue an appointment later to Respondent No.1. It is in pursuance thereto that by an order 9.8.2012 the appointment of the petitioner came to be cancelled w.e.f. 31.8.2012. By an order dated 8.8.2012, Respondent No.1 was appointed. Another appointment order was also issued to Respondent No.1 on 9.8.2012.

6] On 13.8.2012, the then Head Master issued a letter to Respondent No.1 stating that no post was available, as the petitioner was still then working on the post advertised. On 22.3.2013 the Education Officer wrote a communication to the Deputy Director of Education stating that the appointment of Respondent No.1 cannot be effected. On 9.12.2013 the concerned Department of the State Government called for an explanation in the matter. On 23.8.2014, the cancellation order of the appointment of the petitioner, was withdrawn and the petitioner was continued with the employment. It is material to note that on 31.10.2013, a communication was issued by the concerned Department of the State Government to the Deputy Director of Education asking the details about the approval being granted to the petitioner. On 3.12.2014, a proposal was sent by the Respondent Nos. 2 and 3 for approval to the

Education Officer, seeking the approval of the petitioner. On 20.2.2014, an order was issued, terminating the Respondent No.1, as there was no post available. There is no dispute between the learned counsels regarding the aforesaid dates and events.

7] Mr. Thakre, learned counsel for the petitioner submits that the impugned order cannot be sustained, as the learned School Tribunal has laid much emphasis on the expression “women candidate shall be preferred” when in fact there was no such reservation available. He submits that such a preference could only be given to fill in the roster point and by inviting my attention to the communication of the Education Officer, dated 22.3.2013, addressed to the Deputy Director of Education, it is submitted that stand was taken that 30% horizontal reservation for women had already been filled in. Reliance is also placed upon the report dated 23.12.2014 which reiterates the above position. It is therefore submitted that since the horizontal reservation was already filled in, there was no question of any preference to the women candidate, as such a preference cannot be over and beyond the 30% horizontal reservation. It is further submitted by him that Respondent No.1 herself had come before the Tribunal with a case that for getting appointment to the post of Shikshan Sewak, she had given a bribe of Rs. 17.5 lakhs to Respondent No.1 society

and this being the case specifically put forth by Respondent No.1 which is reflected from para 6, 7, and 8 of the memo of appeal the conduct itself dis-entitled the Respondent No.1 from any relief at the hands of the learned Tribunal. He further invites my attention to the manner in which this plea has been dealt with by the Tribunal in paras 44 and 45 and submits that if the same is sustained, it would amount to putting a premium on the illegal acts of the Respondent No.1 and the allegations in this regard ought not to be countenanced.

8] Mr. Gordey, learned Senior Counsel submits that the advertisement itself indicated that the preference would be given to a women candidate, considering which since the Respondent No.1 was more qualified, she ought to have been preferred to the petitioner. By relying upon the expression “preference to woman candidate”, as occurring in the advertisement, he submits that the selection committee ought not to have considered the candidature of the petitioner. He further by inviting my attention to the findings of the learned Tribunal in para 25, points out that though there is no provision in the MEPS Act or the Rules to consider the marks obtained by the candidate in their D.Ed examination, the consideration of the same by the Education Officer in the report dated 12.12.2014 is clearly misplaced and would not entitle the petitioner to any

indulgence at the hands of the Respondent Nos. 2 and 3. He therefore submits that it was the Respondent No.1 who was legally entitled to be appointed and therefore, the judgment of the learned School Tribunal ought to be sustained. Reliance is placed on **Shama Prasahant Raje vrs. Ganpatrao and others, 2001 (1) MhLJ 206**, para 5.

9] Mr. Dhabe, learned counsel for respondent No.3 Society submits that Respondent No. 6 is not responsible or involved in the allegations against the society of having accepted any monetary consideration from Respondent No.1 in the matter of her appointment. He submits that the present Secretary has joined in the year 2017 and therefore was in no way concerned with the allegations against the management. He further submits that there has to be a resolution for appointment of Respondent No.1 for which reliance is placed upon **Gajanan Uddhaorao Garole vrs. State of Mah and ors 2009 (5) MHLJ 300** and so also on **Govt. of A.P. vrs. P.B.Vijaykumar and another AIR 1995 SC 1648-C** to contend that any reservation/preference for women cannot exceed the limit of 30%.

10] Learned AGP, has supported the impugned judgment.

11] I, have bestowed my anxious consideration to the rival contentions. At the outset it would be material to state that since there is no dispute as to the sequence of events, as indicated above, the appointment of the petitioner, and its subsequent approval by the Education Officer is not a matter of dispute. What therefore remains to be seen is whether the advertisement granted a preference to the woman candidate and whether such preference was indeed permissible. This has to be necessarily looked into in the background of the position regarding applicability of the roster point which fixes the reservation for the various categories. It is trite that while the said threshold for each category ought not to be kept vacant, it is equally correct to say that it also ought not to be crossed over, for the reason that any crossing over or exceeding of the threshold would immediately make it susceptible to a plea of violation of the fundamental rights in the matter of getting employment. The communication dated 22.3.2013 by the Education Officer (Secondary)/Respondent No. 4 in clear and categorical terms states that the 30% horizontal reservation for women category was already filled in, in view of which it is apparent that there was no question of giving any preference to the women candidates in the matter of filling of the vacancy of Shikshan Sewak as advertised on 21.4.2012, though it was permissible for them to compete with male candidates on an equal footing. So also the

decision dated 12.12.2014 taken by the Education Officer, in pursuance to the order of this Court dated 21.11.2014 in Writ Petition No. 939/2014, reiterates that for the academic year 2011-12 the reservation for the women category was already filled in and therefore it could not be said that the post as advertised by the advertisement dated 21.4.2012 was reserved for Scheduled Caste women category. This being the position, merely because the advertisement indicated that there would be a preference to the women applicants, that by itself would not mean that the post was reserved for a candidate from the women category or that a woman was to be preferred to a male in considering the issue of filling of the said post. That being the position, in my considered opinion, since the horizontal 30% reservation for woman category was already filled up, it could not be said that the said preference indicated in the advertisement would mean that the Respondent No.1 ought to have been preferred over and above the petitioner.

12] That takes me to the next contention that even though petitioner had secured more marks in B.Ed examination, he had no right to be appointed on that basis. It is an admitted position that while considering the fulfillment of the qualification for filling in the post, the number of marks secured in the B.Ed examination would be a relevant criteria, if the

procedure prescribed for selection, makes it so. Thus though this is one of the contention considered by the learned Education Officer, in the order dated 12.12.2014, the same will have to be tested on the anvil of the prescribed selection procedure. The contention is that the Respondent No. 1 had obtained more marks in written examination and interview and therefore, ought to have been selected. The details of the marks obtained by the respective candidates have been indicated in the note placed on record by the learned Senior Counsel, which indicates that the petitioner had secured 18 ½ marks in the written examination and 13 marks in the interview, totalling 48½, whereas the Respondent No.1 had secured 23½ in the written exam and 46 marks in interview, totaling to 69½. It is submitted that since the Respondent No.1 had secured more number of marks and since there was a preference for the women candidate, it was she who ought to have been appointed. Mr. Thakre, learned counsel for the petitioner has invited my attention to the G.R dated 27.4.2000 prescribing the scheme for selection and appointment in the schools, Clause 11 of which indicates that the list of the candidates have to be prepared on the basis the marks secured in 10th, 12th, and B.Ed. It also indicates in sub-clause (6) of Clause 11 that the interview is restricted only to the observing of the personality of the candidate and in those interviews no marking should be given and the selection of the candidate would be

on the basis of the marks secured in D.Ed/B.Ed written examination. The above sub-clauses (3) and (11) of the aforesaid G.R. dt 27.4.2000 which held the field on the date when the selection was made, clearly indicates that the appointment was to be made on the basis of the marks secured in the D.Ed/B.Ed examinations. The learned Tribunal has clearly ignored this position in arriving at a contradictory finding.

13] That takes me to the submission that the Respondent No.1 had claimed to have given monetary consideration to Respondent No. 3 society to the tune of Rs. 17.5 lakhs for the purpose of securing the appointment. Such averments are contained in paras 7, 8 and 9 of the memo of appeal filed by the Respondent No. 1 before the learned Tribunal. The learned Tribunal in the impugned judgment though has noted these allegations in paras 42 to 44, however such conduct on part of the Respondent No.1 has been tried to be justified by the Respondent No.1 which considering that the Tribunal has been appointed to render justice ought not to have been done. Once having held that the Respondent No.1 had given a bribe to the society, for being appointed, the learned Tribunal ought to have dealt with this submission in a manner befitting the tribunal, and not by justifying the same. Though the Hon'ble Apex Court in **Shayma Prashant Raje vrs. Ganpatrao 2001 (1) Mh.L.J. 206** has laid down the parameters for exercise of the

jurisdiction under Articles 226 and 227 of the Constitution and held that the High Court cannot convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is a proper view to be taken or ordered to be made, however, in the same judgment, it has also been held that if on a mere perusal of the order of the inferior Tribunal, if the High Court comes to a conclusion that such Tribunal has committed a manifest error or has ignored material or misconstrued the material on record, the High Court would be fully justifying in interfering with the findings of the Tribunal. As indicated above, the Tribunal having found that the Respondent No.1 had indulged into an action of payment of bribe to Respondent No. 3 in the matter of securing an employment, it could not have justified the said action and set aside the appointment of the petitioner. It is only to be noted that the respondent no.1, had aspired to be appointed as a Shikshan Sewak, to impart education to students and if the conduct of the respondent no.1, on her own say/averments on oath, as contained in the memo of appeal, was stained by such dubious means in the matter of claiming an appointment, one shudders to think, what quality of education would have been imparted by her to the students, if permitted to do so.

14] That apart, when the 30% horizontal roster for woman was already filled, the learned tribunal could not have held that the same be crossed in order to give the Respondent No.1 an appointment.

15] The contention of Mr. Dhabe, learned Counsel for the respondent no.3, that the present management was not concerned with, nor responsible for the allegations as made by the respondent No.1 of having paid a bribe to the then office bearers of the management in the year 2012-2013, as there was change in management, would not absolve the management in strictly adhering to the Rules, regulations and various Government Resolutions which govern the filed in the matter of appointments, compliance with which ought to be strictly ensured.

16] Thus in my considered opinion, this is a fit case where the judgment of the Tribunal needs to be interfered considering what has been discussed above. The impugned judgment is therefore quashed and set aside and the appeal filed by Respondent No.1 is dismissed. No order as to costs.

JUDGE