

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8196 OF 2021

Nitin s/o Bhanudas Waghmare
Age: 29 years, Occu.: Service
as Assistant Teacher,
R/o. Nalegaon, Tq. Chakur,
Dist. Latur

... Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Education Department,
Mantralaya, Mumbai-32
2. Deputy Director of Education,
Latur Division, Latur
3. Education Officer (Secondary)
Zilla Parishad Nanded.
4. Navneet Shikshan Prasarak Mandal,
Nalegaon, Tq. Chakur, Dist. Latur,
Through its Secretary,
5. Trivenibai Patil Secondary School,
Nalegaon, Tq. Chakur, Dist. Latur,
Through its Head Master

... Respondents

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Mr. V. S. Panpatte, Advocate for petitioner.
Mr. A. R. Kale, AGP for respondent Nos.1 to 3 - State.
Mr. B. P. Gonare, Advocate for respondent Nos.4 and 5.

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CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.

DATE : 20.10.2022

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2. The petitioner, who is the teacher, has invoked the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India challenging the rejection of approval by order dated 26.03.2021 passed by the Education Officer (Secondary) Zilla Parishad, Latur. The approval has not been granted in view of Government Resolution dated 14.10.2010. Respondent Nos.4 and 5 are the Management and the School, in which the petitioner is working as Assistant Teacher since 2016.

3. The school has received the revision and has also received 100% grant-in-aid from the State. The petitioner is B.Sc. (Science and English subjects) B.Ed. and was eligible for appointment to the post of Assistant Teacher in Secondary School having 8th to 10th classes. He is a member of Scheduled Caste and has validity certificate. Respondent No.4 - Society running respondent No.5 - School issued advertisement on 07.12.2015 for filling up of the vacant and sanctioned post of teacher. After adopting due procedure, he was selected and respondent Nos.4 and 5 issued appointment order on 01.01.2016 appointing him as Shikshan Sevak w.e.f. 01.01.2016 to 31.12.2019. His appointment was

against a clear vacant and sanctioned post and within the sanctioned staffing pattern. Respondent No.5 thereafter submitted proposal to respondent No.3 for getting approval of the appointment of the petitioner, however, it has been rejected on 26.03.2021 on the ground that no prior permission from the office of respondent No.3 was taken for filling up of the vacant post. In fact, respondent No.5 had already informed to the office of respondent No.3 by making application on 02.11.2015 and had sought permission to fill up the post. The roster was duly certified by the Commissioner of B.C. Cell, Aurangabad. The petitioner also contends that the ban which was imposed by Government Resolution dated 14.10.2010 was relaxed in respect of subject of English, Mathematics and Science vide Government Resolution dated 04.09.2013, communication dated 19.07.2014 and Government Resolution dated 24.08.2018. There was no question of surplus teachers and in fact, in the impugned order, respondent No.3 had not clarified as to how many surplus teachers in the subject of English were available. The impugned order passed by respondent No.3 is illegal. By way of amendment, the petitioner has also contended that when the proper procedure has been followed and even the Government had issued directions by holding meeting that approvals be granted to those teachers whose appointments have been made by obtaining no objection from the

Education Department, the petitioner has, therefore, prayed for setting aside the impugned order passed by respondent No.3 and grant approval to him.

4. Affidavit-in-reply has been filed on behalf of respondent No.3 by Ankush Bhagwat Shingade, Superintendent - (Gr.B) Education Office, (Secondary), Zilla Parishad, Latur. According to him, the petitioner has not approached with clean hands and suppressed the material facts. It is then stated that respondent Nos.4 and 5 have not obtained prior permission for issuance of advertisement in respect of the vacant post and, therefore, the rejection was proper.

5. Heard learned Advocate Mr. V. S. Panpatte for the petitioner, learned AGP Mr. A. R. Kale for respondent Nos.1 to 3 - State and learned Advocate Mr. B. P. Gonare for respondent Nos.4 and 5.

6. It has been vehemently submitted on behalf of the petitioner by bringing various documents to the notice of this Court that the petitioner belongs to the Scheduled Caste and the advertisement that was published was for the reserved post i.e. from the category of Scheduled Caste. In order to show that there was a clear vacancy, the Teaching Staff Sanch has been produced from the year 2016-2017. Further, after the petition was amended, document has been produced, which is communication dated 02.11.2015 by the

Headmaster of the School to the Education Officer seeking permission to fill up the post of teacher for the subject of English from Scheduled Caste category, which is vacant since 2012. Even the Minutes of Meeting that was held on 26.02.2019 would clarify that those teachers, who were appointed between 2012-2013, whose approval could not have been granted only on the ground that they have not obtained permission or No Objection Certificate was not taken, in respect of those teachers also, the individual approval should be given and accordingly, instructions were given to the concerned persons. In spite of these facts, the impugned order has been passed.

7. Learned Advocate Mr. Panpatte appearing for the petitioner has taken this Court through the Government Resolutions and then pointed out that by Government Resolution dated 19.07.2014, permission was granted to fill up the post of teachers, who would teach Mathematics, Science and English. He placed reliance on certain decisions of this Court i.e. ***Sou. Revati Kusha Wagh and Anr. Vs. The State of Maharashtra and Anr., in Writ Petition No.10580 of 2015 with companion matters*** decided on 09.03.2017, wherein after relying upon the earlier decision in ***Ashok Nilkanth Dhale Vs. State of Maharashtra and Ors., [2016 (5) Mh.L.J. 742]***, it was held that the Government

Resolution dated 02.05.2012 will not be applicable where the appointment is made from the reserved category after following due procedure of law. Further, he relied on the decision of this Court at principal seat in ***Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra Thru Secretary and Ors., in Writ Petition No.8587 of 2016 with companion matters*** decided on 10.07.2017, wherein it was reiterated based on the decision in ***Revati Wagh (Supra)*** that the State Government relaxed the ban imposed under the Government Resolution on 04.09.2013. The petitions were then categorized and the Education Officers were directed to examine the independent cases and grant approval to each of the teachers, who had fallen amongst three categories :-

- a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;
- b) Where the appointments made for filling up vacancies in English, Mathematics and Science;
- c) Where the recruitment is made to fulfill the backlog of reserve categories candidates;

It can be seen that similar view has been taken in the other decisions also which have been relied by the learned Advocate Mr. Panpatte.

8. Per contra, the learned AGP representing respondent Nos.1 to 3 opposed the petition and submitted that the Management was aware about the ban imposed and further when the Management was supposed to accommodate the surplus teachers, for which there is another Government Resolution, then it would create discrimination and it would be another problem for the State to pay the salaries of those teachers, who would be rendered surplus.

9. At the outset, it is to be noted that the main objection as per the impugned order appears to be that No Objection Certificate has not been taken by the Management before appointing the petitioner. In fact, the petitioner by amending the pleadings has produced the copy of the communication dated 02.11.2015 seeking permission by the School from the Education Officer and there is no counter affidavit. Therefore, it cannot be said that there was a suppression of fact by the petitioner. It has been clearly stated in the said application dated 02.11.2015 that the said post which was reserved for Scheduled Caste category for the subject of English is vacant since 2012. It also appears that the Education Officer had not decided/taken action on that application for a considerable time. The advertisement was published in the newspaper on 07.12.2015. That means, the management and the school reasonably waited for the response from the Education Officer. Another fact to be noted is

that the Bindu Namavali has been got verified and it shows that even in 2019 there was a vacant post of one teacher under Scheduled Caste category.

10. We would like to rely on the observations in paragraph No.8 of the decision in **Smt. Munoli Rajashri Karabasappa (Supra)**, wherein the inaction on the part of Education Officers has been considered, which reads thus :-

"8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the State exchequer will be burdened."

11. Present case can also be taken as a classic case when in fact permission was sought prior to the issuance of advertisement by

the school for filling up the post, yet it was not considered and, thereafter, the objection has been taken that No Objection Certificate has not been obtained. There is absolutely no fault on the part of the petitioner. His appointment was by following due procedure by respondent Nos.4 and 5 and, therefore, the petition deserves to be allowed by setting aside the impugned order. For the aforesaid reasons, following order is passed :-

ORDER

- i) The Writ Petition is hereby allowed.
- ii) The order dated 26.03.2021 passed by respondent No.3 is quashed and set aside.
- iii) Respondent No.3 is directed to grant approval to the appointment of the petitioner as Shikshan Sevak in respondent No.5 - School w.e.f. 01.01.2016 to 31.12.2019 and after considering and holding the successful completion of the mandatory tenure further grant the approval as Assistant Teacher. Such exercise be done on or before 01.12.2022.
- iv) The arrears of salary be paid to the petitioner before 31.12.2022.

- v) Petitioner to get regular pay of the appropriate scale after the grant of approvals accordingly.
- vi) Rule is made absolute in the above terms.
- vii) No order as to costs.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm