

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5781 OF 2017

Smt. Pratibha Dnyaneshwar Patil

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr. Rahul A. Tambe, advocate for the Petitioner.

Mr. P. S. Patil, AGP for Respondent Nos.1 & 6.

Mr. N. S. Choudhary, advocate for Respondent Nos. 2 & 3.

Mr. A. J. Patil, advocate for Respondent Nos.4 & 5.

Mr. U. S. Patil, advocate for Respondent No. 7.

**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 24 June, 2022.

PC :

By this petition, the petitioner is seeking a declaration that the approval granted to Respondent No.7 by the third Respondent vide order dated 15.12.2015, pursuant to the appointment order dated 20.08.2014, is illegal and contrary to the Government Resolution dated 02.05.2012. Incidentally, the petitioner is also seeking her appointment on compassionate ground in place of her husband who expired while working as Head Master, in the Primary School.

2 The learned Counsel for the petitioner submits that husband of the petitioner, who was working as Head Master in the Primary School, expired on 18.08.2014. The petitioner applied for appointment on compassionate ground as she was duly qualified. She was appointed as a *Shikshan Sevak* by order dated 19.08.2014. The Respondent-Management sent proposal for approval. The Respondent – Education Officer (Primary) has not granted approval, on the ground that the petitioner is holding qualification as M.A. B.Ed. (English) and the required qualification for the post on which she was seeking appointment is SSC/HSC/D.Ed. and hence she is not qualified for the post of *Shikshan Sevak* or Assistant teacher in the primary school. Secondly, according to the Education Officer, there was a ban on the recruitment as per the Government Resolution issued in the year 2012.

3 We have heard learned Counsel for the parties and perused record.

4 In this case, there is no formal order passed by the Education Officer refusing to grant approval to the appointment of the petitioner. The reasons, as aforesaid, are forthcoming in the affidavit-in-reply filed on behalf of the Education Officer. The learned Counsel appearing for the Respondent-Education Officer,

in all fairness, did not dispute that the ban imposed under the Government Resolution of the year 2012 is not applicable to the appointments on compassionate ground. Even so far as the educational qualification is concerned, we find that the petitioner is having educational qualification higher than the requirement for the post. We find that it is for the Education Officer, in such case, to examine the proposal in all respect as per the applicable norms and the Education Officer ought to have decided the proposal on its own merits. We do not appreciate the Education Officer keeping the proposal pending and then trying to give reasons before this Court for which the approval cannot be granted.

5 In that view of the matter, we dispose of the writ petition by directing the Respondent-Education Officer (Primary) to decide the proposal for grant of approval to the appointment of the petitioner on its own merits and in accordance with law, in the context of the approval granted to the appointment of Respondent No.7. However, the Education Officer shall not reject the proposal on the ground of there being a ban on the appointment. The proposal shall be decided within a period of eight weeks from today. All other rival contentions are kept open.

SANDIPKUMAR C. MORE, J.
adb

C. V. BHADANG, J.