

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1380 OF 2021

Amit Mohanrao Kadam,
Age 32 yrs., Occ. Service,
R/o Latur, Tq. & Dist. Latur.

... Petitioner

... Versus ...

- 1 The State of Maharashtra,
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2 The Education Officer (Secondary),
Zilla Parishad, Latur.
- 3 Vidya Vikas Education Society,
Latur, Tq. & Dist. Latur
Through it's President/Secretary.
- 4 Pratibha Niketan High School,
Latur, Tq. & Dist. Latur
Through it's Headmaster.

... Respondents

...

Mr. V.S. Panpatte, Advocate for petitioner

Mr. A.S. Shinde, AGP for respondent Nos.1 and 2

Mr. B.P. Gonare, Advocate for respondent Nos.3 and 4 - **absent**

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

RESERVED ON : 11th OCTOBER, 2022

PRONOUNCED ON : 08th DECEMBER, 2022

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

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

2 The petitioner, who is an Assistant Teacher, is a member of Scheduled Caste came to be appointed by appointment order dated 10.09.2015 after adopting a due procedure with respondent No.3 – School. There was a clear vacant post available on the date of his appointment. The Headmaster of the school, who stood retired on 30.06.2014, was from OBC category. As a result of which, there was a vacant post. The roster was duly verified by the Commissioner of B.C. Cell and thereafter it was made known that the post from the S.C. category is available. After the appointment, the petitioner's name was also included in the civil list of staff of the said school for the year 2015-16 to 2019-20. The staff sanction order issued by respondent No.2 for the year 2015-16 to 2018-19 has been produced on record. The respondent No.4 submitted proposal on 16.10.2018 to

respondent No.2 for granting approval to the appointment of the petitioner. The respondent No.2 did not consider the said application immediately. The petitioner was required to approach this Court by filing Writ Petition No.12470 of 2019 and then this Court had directed respondent No.2 to consider the approval and pass a specific order. After taking repeated follow up with the respondent No.2, ultimately the respondent No.2 rejected the proposal on erroneous grounds. The said order was issued on 20.03.2020, however, it has been received by the petitioner on 29.05.2020. The said order is illegal, perverse and contrary to the Government Resolutions. The petitioner had completed three years period of Shikshan Sevak on 09.09.2018 satisfactorily and, therefore, as per the policy within GR dated 14.10.2010, proposal for seeking approval after completion of period of Shikshan Sevak as regular Assistant Teacher should have been considered within a period of one month from the date of submission of this approval by the respondent No.2. As the impugned order suffers from illegality, it deserves to be set aside by issuing writ of certiorari as well as writ of mandamus has been prayed, directing the respondent No.2 to grant approval to the services of the petitioner.

3 Affidavit-in-reply has been filed on behalf of respondent No.2 by
by Mr. Ankush Bhagwat Shingde, Superintendent, Class-II in the office of

Education Officer (Secondary), Zilla Parishad, Latur, Tq. & Dist. Latur. It has been contended that respondent No.3 – Education Society has appointed one Smt. Indu Batanpurkar on compassionate ground for the Science subject and submitted proposal for approval to the office of the deponent. There was no clear vacant post available for granting appointment of the petitioner and, therefore, the impugned order is correct.

4 Heard learned Advocate Mr. V.S. Panpatte for petitioner and learned AGP Mr. A.S. Shinde for respondent Nos.1 and 2.

5 The learned Advocate for the petitioner has taken us through the clarification of the petitioner, the advertisement that was published on 06.09.2015 on behalf of the society/school mentioning clearly that the post of Assistant Teacher is available from S.C. category. The petitioner has also produced his caste certificate. Thereafter, the *Sanch Manyata* on 2015-16 dated 06.05.2016 has been produced also showing the sanctioned teaching posts as well as working strength. It is stated that there were 9 posts of teaching staff available for the year 2014-15 and at that time 7 posts were filled/working during that year. It is then stated that thereafter the data/*Sanch Manyata* for the year 2015-16 for the teaching staff shows that sanctioned strength is 9 and proposed teaching post is zero. That means, the

school has exhausted the sanctioned strength in that year and this position continued till 2017-18. The seniority list maintained at the school has also been produced. He also submitted that in various decisions of this Court it has been held that the ban imposed by GR dated 02.05.2012 was not applicable to the appointments, which were made from the reserved category after following due procedure of law and, therefore, the respondent No.2 ought to have granted approval.

6 Learned Advocate for petitioner further relied on the decision of this Court in **Shivkant Venkatrao Losare vs. The State of Maharashtra and others** in **Writ Petition No.11787 of 2017**, decided on 14.08.2019 that the Education Officer should take into account the position prevailing at the time of appointment of the employee. Therefore, respondent No.1 ought to have been considered the position as on 18.09.2015. He also pointed out that now an order has been passed by respondent No.2 in respect of Smt. Indu Shivajirao Batanpurkar that approval has been sanctioned to her appointment and it is stated to be from the date of 01.07.2019. He has produced copy of the order of approval as well as permission to include her name in *Shalarth Pranali*. He submitted that even as on today as per the roster two posts are available in the said school.

7 Per contra, the learned AGP submitted that when there was no
clear and vacant post, the petitioner cannot seek grant of approval.

8 The facts appeared to be very much clear, though it appears from
the seniority lists, those have been produced by the petitioner himself,
wherein said Smt. Indu Shivajirao Batanpurkar's appointment has been
stated to be 17.02.2014; yet, it appears from the order that has been passed
now that her first appointment date has been taken as 01.07.2019 and not as
17.02.2014. If that would have been taken as 17.02.2014, then, the facts
would have been somewhat different. But, here, in this case, the
appointment of the petitioner was on the basis of an advertisement and it is
not in dispute that it was after the retirement of an Assistant Teacher from
S.C. category. There is sufficient evidence produced on record to prove that
the petitioner belongs to S.C. category and it was clearly mentioned in the
advertisement itself that the post is available from that category. No doubt,
even Smt. Indu Batanpurkar appear to be from the same category, but, as
aforesaid, her date of appointment is taken differently than it is shown in the
seniority list. Seniority list thereafter of 2022-23 has also been produced on
behalf of petitioner, wherein the present petitioner has been shown to be
senior to Smt. Indu Batanpurkar. No doubt, his services are yet to be
approved. In view of the decision of this Court in **Shivkant Venkatrao Losare**

(supra) it will have to be considered that the position on the date of the appointment of concerned employee is required to be considered/ought to have been considered by the respondent No.2. The *Sanch Manyata* for the year 2015-16 would be applicable and that data shows that two posts were still vacant at that time. Therefore, when it can be seen from the so many documents that the respondent No.2 ought to have granted approval to the services of the petitioner as his appointment was against a clear vacancy, the petition deserves to be allowed, by setting aside the impugned order passed by the respondent No.2 on 20.03.2020.

9 Writ petition stands allowed in terms of prayer clause 'B', 'C' and 'D'. Rule made absolute in above terms.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

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