

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

**914 WRIT PETITION NO.6488 OF 2019  
WITH WP/6497/2019 WITH WP/6513/2019**

**MOHAN SAKJHARAM KASTE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Venjane Tukaram M.  
AGP for Respondent Nos.1 & 2 : Ms. V.S. Choudhary  
Advocate for Respondent No.3 : Mr. S.S. Manale

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**CORAM : RAVINDRA V. GHUGE &  
S.G. MEHARE, J.J.**

**DATED : 02<sup>nd</sup> MARCH, 2022**

**PER COURT:-**

1. All these petitioners fall in the non-teaching category. This is their second round before the High Court. In the earlier round, this Court had directed the Education Officer to apply his mind to the record available and pass appropriate orders on their approval proposals. In all the impugned orders, we find a common thread for rejection and i.e. "the appointment of the petitioner is made during the ban on recruitment".

2. There is no dispute that the State Government had introduced a ban on recruitment in the teaching and the non-teaching category vide Government Resolution dated 02.05.2012. As a consequence of the said government resolution, hundreds of cases

flooded this Court as the Education Officers in various areas were refusing to accord approval. In such hundreds of cases, we have been passing orders directing the Education Officers to apply their minds by considering the facts and circumstances of each case and pass orders. Today, we realize that our efforts were a futile exercise when Education Officers devote two paragraphs to our directions and in the last short cryptic paragraph, the approvals are refused on the ground that the appointment of these persons fall within the period of ban on recruitment. To say the least, we do not find any application of mind by the Education Officer. However, we are of the considered view that remitting the matters back to the Education Officer would actually result in injustice, as these petitioners once again have to go to the doorstep of the Education Officer and would be at his mercy. We do not expect any better order being passed by the Education Officer though we may remand this matter once, twice or thrice.

3. Our task is now lessened and made easier by the judgment dated 10.07.2017 delivered by the learned Division Bench of this Court at the Principal Seat in Writ Petition No.8587 of 2016 and a bunch of petitions connected therewith. It would be necessary to reproduce paragraph no. 6 of the said judgment as under :-

“6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of

English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2<sup>nd</sup> May 2012 vide GR dated 4<sup>th</sup> September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6<sup>th</sup> September 2012.”

4. With the above observations, the learned Division Bench proceeded to make it's observations in paragraph 7 to 11 as under :-

“7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfil the backlog of reserved category candidates.

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.

9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents – Education Officers are directed to examine independent cases and grant

approval to each of the teachers who fall in the following 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 fulfil the backlog of reserve categories candidates;

10. The necessary orders after hearing the management and teachers be passed within a period of six weeks from today.

11. Needless to state that upon grant of approval necessary steps would be taken for paying salary to such of the teachers who are found eligible and salaries would be paid to them within a period of 12 weeks from today.”

5. The learned AGP points out that the above judgment was delivered in the case of the teaching staff. This submission would not deter us from passing orders for the reason that the Government Resolution dated 02.05.2012 was not in isolation to the extent of the teaching staff alone. The ban on recruitment introduced by the State Government vide the said government resolution was on teaching as well as non-teaching staff. The learned Division Bench at the Principal Seat has observed in paragraph 6 reproduced above that the State Government has issued a further Government Resolution dated 04.09.2013 diluting the rigours of Government Resolution dated 02.05.2012 by relaxing the ban in those cases where the selection process has already commenced prior to 06.09.2012. This Government Resolution dated 04.09.2013 is not restricted only to the

teaching staff, but, on the same lines on which the Government Resolution dated 02.05.2012 was introduced, the Government Resolution dated 04.09.2013 also pertains to the teaching as well as the non-teaching staff. The learned advocate representing respondent no.3 points out that with the introduction of the Right of Children to Free and Compulsory Education Act, 2009, the staffing pattern for the non-teaching staff has been done away with.

6. Notwithstanding the relaxation made vide the Government Resolution dated 04.09.2013 with regard to the teaching category, the learned Division Bench has concluded in the judgment dated 10.07.2017 that if the recruitment process has already commenced prior to the Government Resolution dated 02.05.2012, the approval could be granted to the appointment, ofcourse subject to the availability of the vacancies and the backlog.

7. In the cases in hands, it is not the stand taken by the Education Officer that the management recruiting these petitioners has violated the reservation policy or the backlog. In so far as the vacancies are concerned, in each of these three petitions, we find a communication of the Education Officer dated 20.10.2011 at page no.16 (1<sup>st</sup> petition), dated 11.10.2012 at page no.15 (2<sup>nd</sup> petition) and dated 11.10.2012 at page no.13 (3<sup>rd</sup> petition), that the Education Officer had granted permission to recruit the non-teaching staff since there were vacancies, prior to the ban.

8. As such, two factors have been completely lost sight of by the Education Officer. Firstly, that in all these three cases, the appointments were made prior to the ban introduced by the Government Resolution dated 02.05.2012 and this is an undisputed position. Secondly, in the case of each of these petitioners, staffing pattern for the non-teaching staff for the academic year 2010-11, 2011-12 and 2012-13 was approved by the Education Officer (Secondary) and permission to recruit was granted depending on the vacancies. It is pointed out before us that documents at page no.15 (1st petition), page no.17 (2<sup>nd</sup> petition) and page no.15 (3<sup>rd</sup> petition), indicate that there were vacancies. We also find that one post was reserved for the SC category and the petitioner in the second petition namely Goroba Sitaram Gaderao belongs to the SC category.

9. In view of the above, the three conditions as set out in the judgment delivered at the Principal Seat which would apply even to the non-teaching category, viz. (a) the appointments were made prior to 02.05.2012, (b) there were vacancies and (c) the backlog of one post for SC category, have been fulfilled by the management in these cases.

10. In view of the above, these petitions are allowed. The impugned orders are quashed and set aside. The Education Officer shall accord approval by passing a written order in favour of these petitioners from the dates of their appointment, as expeditiously as

possible and in any case on or before 31.03.2022.

11. In the event of any legal impediment being noticed by the Education Officer, which is not pointed out to us today as we dictated this order, we grant liberty to the Education Officer to approach this Court with a proper application, if felt necessary.

12. In view of the above, the salaries of these petitioners as are admissible in law shall be released within a period of 12 weeks from today.

13. No order as to costs.

(S.G. MEHARE. J.)

(RAVINDRA V. GHUGE, J.)