

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

WRIT PETITION NO.6882 OF 2019

Manoj S/o Suresh Udmale,
Age-28 years, Occu:Service as
Shikshan Sevak at Arts, Science
& Commerce College, Rahuri,
R/o-At Post-Shambhunagar,
Burudgaon Road, Ahmednagar,
Tq. & Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Chief Secretary,
Education Department,
Mantralaya, Mumbai-32,
- 2) The Deputy Director of Education,
Region, Pune,
- 3) The President,
Shivaji Shikshan Prasarak Mandal,
Rahuri, Tq-Rahuri,
Dist-Ahmednagar,
- 4) The Principal,
Arts, Science & Commerce College,
Rahuri, Tq-Rahuri, Dist-Ahmednagar,
- 5) Namdeo S/o Raosaheb Dethe,
Age-39 years, Occu:Service,
R/o-Mahegaon, Tq-Rahuri,
Dist-Ahmednagar.

...RESPONDENTS

...
Mr.A.S. Shelke Advocate for Petitioner.
Mr.S.B. Yawalkar, A.G.P. for Respondent Nos.1 and 2.
Mr.V.P. Patil Advocate for Respondent Nos.3 and 4.
Mr.P.S. Dighe Advocate for Respondent No.5.
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**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 13th OCTOBER, 2022

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

1. The petitioner, by invoking the constitutional powers of this Court under Articles 226 and 227 of the Constitution of India, seeks following reliefs:-

“(C) By issuing writ of certiorari, the impugned appointment order dated 01.09.2017 by the respondent no.3 and thereby the impugned approval order dated 30.06.2018 at Exh- _ to respondent no.5 may kindly be quashed and set aside.

(D) By issuing writ of mandamus, the respondent no.2 and 3 may kindly be directed to consider the claim of the petitioner for appointment as full time Teacher in English subject in place of the respondent no.5 and for that purpose pass necessary orders. ”

2. Heard Mr. Shelke, learned Advocate appearing for the petitioner, Mr. Yawalkar, learned AGP appearing for the State, Mr.

Patil, learned Advocate appearing for respondent Nos.3 and 4 and Mr. Dighe, learned Advocate appearing for respondent No.5.

3. It is contended on behalf of the petitioner that the petitioner is having due qualification and was eligible for the post of Shikshan Sevak. He is a member of Scheduled Caste (for short "SC") category. He was appointed by respondent No.3 as Shikshan Sevak by order dated 1st August 2015 for the period of three years i.e. till 31st July 2018 from SC category. Respondent Nos.3 and 4 had forwarded his caste certificate to the caste scrutiny committee, which came to be verified and the validity has been granted on 31st March 2016. Thereafter respondent No.2 had granted the approval on 25th May 2016. Respondent No.5 was appointed from Other Backward Class (in short "OBC") category and he has no concern with the appointment of the petitioner. The petitioner was appointed on clear vacancy as a part time Shikshan Sevak from SC category. Respondent No.2, without application of mind, directed that the salary of the petitioner should be stopped and such letter was issued on 8th July 2016. The petitioner then preferred Writ Petition No.10948 of 2016. After the notices were issued to respondent Nos.2 and 3 in respect of the said Writ Petition, they terminated the services

of the petitioner. Thereafter Civil Application was filed in the said Writ Petition and the Civil Application as well as Petition came to be disposed with directions by this Court by order dated 4th December 2017. Respondent Nos.3 and 4 reinstated the petitioner by order dated 5th April 2018. There is no back log of OBC category in respondent No.3 institution. However, respondent No.2 issued order dated 30th June 2018 appointing respondent No.5 as full time Shikshan Sevak from OBC category, which was contrary to the Judgment and order dated 4th December 2017 passed in the said Writ Petition.

4. The petitioner contends that respondent No.2 ought to have issued approval to the services of the petitioner with effect from 1st August 2015 as the petitioner was reinstated. However, the said approval order dated 6th August 2018 states that services of the petitioner are approved with effect from 2nd September 2017. In fact the appointment of respondent No.5 on post of full time Shikshan Sevak is with an intention to defeat the claim of the petitioner to that post from SC category. It is also stated that as per the roster only one post of OBC category was available as a back log with respondent institution, however, two candidates, namely, Dhamdhere Shobha and Wable Vishal

came to be appointed as full time teacher from OBC category, therefore, one post is in excess. Petitioner also states that as per the Government Resolutions dated 27th March 1991 and 31st January 2001, if the post becomes vacant from OBC category, like upon retirement of one Borade who was working as Vice Principal and part time teacher in English subject, then it should go to SC category and it cannot be continued for OBC category. It is then stated that respondent No.3 again issued an appointment order dated 23rd February 2018 thereby appointing petitioner with effect from 2nd September 2017 to 1st September 2020. Respondent No.2, through letter dated 6th August 2018, granted approval only from 2nd September 2017 to 30th April 2018, to the services of the petitioner. All this has been made just to confuse the appointment of the petitioner and to deprive him from his rightful claim. The petitioner had made representation on 9th July 2018, however the same has not been considered, as it appears from approval letter dated 21st November 2018 issued by respondent No.2. The petitioner has, therefore, approached this Court by the present Writ Petition.

5. Affidavit-in-reply has been filed on behalf of respondent

Nos. 3 and 4 by Shri Sambhaji Annasaheb Pathare, the Principal of the College. It has been contended that respondent No.5 was working as a part time teacher in the respondent college and was terminated from the service. Respondent No.5 filed Writ Petition No.2783 of 2015. As services of respondent No.5 were terminated, he also filed Appeal No.66 of 2015 before the School Tribunal, Solapur. The petitioner was also party to that proceeding before the School Tribunal. Respondent No.5 was working with the Institution as part time teacher since 18th August 2010 and he was teaching English subject. Full time vacancy arose in view of retirement of one Smt. Karale in the year 2014. Petitioner came to be appointed in the year 2015 as part time teacher. There was back log of SC and OBC category in the year 2014. In order to comply with the Government Resolution dated 27th March 1991, one Smt. Kambale was appointed from SC category on full time post to teach English subject and therefore, back log in the category of SC was over by 2014. It is also stated that elections of respondent trust were held in the month of June 2016 and new management committee came in power. As per the statements made in Writ Petition No.2783 of 2015, respondent management appointed respondent No.5 as part time teacher. The petitioner had filed

Writ Petition No.10948 of 2016 challenging the communication dated 8th July 2016 thereby cancelling the approval granted to his services as part time lecturer in English subject. By order dated 4th December 2017 passed in Writ Petition No.10948 of 2016, this Court quashed and set aside the said communication and directed the respondent management to reconsider the petitioner on part time post for English subject as per the availability of the work load and respondent Nos. 3 and 4 were directed to comply the communication issued by authority to the management to forward the proposal of respondent No.5 for full time teacher in English subject. As respondent No.5 belongs to OBC category, on availability of the post under the said category, the management appointed respondent No.5 on full time post. Respondent No.5 was already working on the full time post and the petitioner was working as part time teacher from 2nd September 2017, after availability of post and workload. In fact, as per the petitioner, there was no compliance of the order passed in Writ Petition No.10948 of 2016 and therefore, he filed Contempt Petition No.775 of 2018, however, this Court had refused to issue contempt notice and therefore, the petitioner had withdrawn that Petition. Under the said circumstance, It is submitted that the prayers of the petitioner cannot be accorded.

6. The petitioner has filed rejoinder to the affidavit-in-reply on behalf of respondent Nos.3 to 5. Apart from certain reiterations of his petition, it has been denied that by terminating the services of respondent No.5 the petitioner was appointed. It is stated that appointment of respondent No.5 till April 2014 appears to be from open category as temporary arrangement. The back log of the reserved post has been given and it is stated that out of the said back log, five posts under SC category were available and in view of appointment of one Shri Ovhal, still there was back log of four posts under SC category. As on the date of appointment of respondent No.5 i.e. 1st September 2017, there was no backlog of OBC category and therefore the approval order dated 30th June 2018 was illegal and contrary to Government Circular dated 31st January 2001. No directions were given by this Court in Writ Petition No.10948 of 2016 to appoint respondent No.5 irrespective of availability of reserved post from OBC category. In view of the order passed by this Court on 4th December 2017, the order dated 8th July 2016 came to be set aside and directions came to be issued to the authority to consider the approval and appointment of the petitioner for the period from 1st August 2015 to 31st July 2018.

The management and the Deputy Director of Education, however, appointed the petitioner again with effect from 2nd September 2017 and granted approval to the said appointed, which is contrary to the order passed by this Court. The petitioner reiterated that impugned order of appointment of respondent No.5 dated 1st September 2017 as well as approval to the same by order dated 30th June 2018 being illegal requires to be quashed and set aside and his claim needs to be considered.

7. Affidavit-in-reply as well as rejoinder on behalf of respondent No.5 gives almost the same facts as stated on behalf of respondent Nos. 3 and 4. Along with the same, respondent No.5 has also produced documentary evidence. In order to avoid repetition, the contents of affidavit in reply as well as rejoinder on behalf of respondent No.5, are not reproduced here.

8. Taking into consideration the earlier round of litigation by the parties, it is to be noted that though the petitioner's appointment was from 1st September 2015, which is at Exhibit-A, it is stated that he has been appointed from 1st September 2015 till 31st July 2018 as part time Shikshan Sevak. It appears that

complaint was made by respondent No.5 and therefore by order dated 8th July 2016 it was informed that there is no approval granted to the services of the petitioner and therefore he should not be given salary. This communication was by Assistant Director of Education, Pune to the Superintendent, Salary and Provident Fund Section, Ahmednagar. This letter was then challenged by the petitioner in Writ Petition No.10948 of 2016. As per the Judgment and order passed in the said Writ Petition, it can be said that this Court was of the view that the said order dated 8th July 2016 was passed without hearing the petitioner and therefore it was set aside, and it was directed that the authority concerned shall consider the staffing pattern and consider the approval to the appointment of the petitioner as a part time teacher in English subject. Then, by setting aside the impugned communication, it was directed to the respondent management that it should consider the petitioner for reinstating him on part time post for English subject as per the availability of the work load. In the said order itself, it was observed that the authority has directed the management to forward the proposal of respondent No.5 (respondent No.5 is the same who is respondent No.5 in this Petition) for a full time teacher in English subject, the same shall be complied by the management and

considered by the Deputy Director of Education. Note was taken that respondent No.5 belongs to OBC category and the availability of the post under the said category shall be considered. It is to be noted that in view of this order, it appears that order was passed in respect of allowing the petitioner to join the services from 5th April 2018. The said communication by the President, Shri Shivaji Shikshan Prasarak Mandal to the Principal, Arts, Science and Commerce College, Rahuri states that the petitioner should be allowed to attend the duties as a part time teacher. Thereafter the Deputy Director of Education appears to have granted approval to the post of respondent No.5 from part time to full time, by order dated 30th June 2018. The proposal was forwarded by respondent Nos.3 and 4 for approval to the services of the petitioner on 13th July 2018 and then the approval was granted on 6th August 2018 for the part time post.

9. It is to be noted that there is also resolution that is passed by the respondent management stating that from OBC category one Dhamdhere Shobha and Wabale Vishal were appointed in the meeting held on 8th December 2014. Borade Vijaykumar, who was the vice principal, stood retired from 31st August 2017 and it is stated that he was from the OBC category. According to the

petitioner, as per the Government Resolution dated 27th March 1991, the reservation for the OBC category cannot be carried forward. However, it may be noted that in the affidavit-in-reply filed by respondent No.5 all the dates and events have been given. Respondent No.5 was appointed as a part time Shikshan Sevak on 17th August 2010 and there are documents to show that at that time he was considered from open category. The said appointment was continued till 2014. It also appears that a vacancy arose in 2014 and therefore management issued advertisement for the full time post in English subject from SC category on 27th November 2014 and proceeded to appoint Smt. Kamble on 8th December 2014 on the full time post. A representation was made by respondent No.5 on 4th February 2015 and thereafter he filed Writ Petition No.2783 of 2015 for issuing directions to appoint him on the full time post. That Petition came to be disposed of by recording statements of the respondent management that they would consider the claim of respondent No.5 in future upon the full time vacancy. It is then stated that due to the promotion of Borhade on the post of Vice Principal, there was additional work load on the subject of English and therefore, he made representations to the Administrative Board requesting to appoint him on the full time

post. His representations were dated 19th September 2015 and 30th September 2015. However, though respondent No.5 was attending duties, yet he stood orally terminated and therefore, he filed Appeal No.66 of 2015 before the School Tribunal, Solapur wherein the petitioner was also one of the party. It appears that in the meantime respondent No.5 was making representations to various authorities in respect of creation of one full time post in English subject. By letter dated 30th May 2016 issued to respondent No.4 by the Deputy Director of Education, Pune, respondent No.5 was directed to be considered for the post of full time lecturer. In the meantime, new management committee came and directed reinstatement of respondent No.5 on 6th September 2016 in view of order passed by this Court on 3rd September 2015 in Writ Petition No.2783 of 2015. Thereupon respondent No.5 joined services with respondent No.4 on 8th September 2016. It is also stated that now approval has been granted for services of respondent No.5 and his name has been included in "Shalarth Pranali".

10. The respondents have produced on record the documents showing, how the matter was considered as regards the appointment of respondent No.5, his Petitions and the vacancy

chart that was available at the time of appointments. The first and foremost fact that is required to be noted is that respondent No.5 is working with respondent Nos.3 and 4 even since prior to the appointment of the petitioner. This Court, while disposing of Writ Petition earlier filed by the petitioner i.e. Writ Petition No.10948 of 2016, had directed that his name should be considered for the part time post only and as regards respondent No.5 is concerned, it was stated that his name be considered for the full time post in view of the availability of the post from OBC category. The B.C. Cell had shown six vacancies from OBC category in the roster on 20th August 2014 and even on 25th February 2019 it had shown one post from OBC category as vacant. Therefore, it cannot be said that respondent No.5 is occupying the said post on which the petitioner has made a claim. Rather, as per the contentions of respondent Nos.3 and 4 there is no vacancy from SC category on the full time post. Further, during the course of arguments, it has been stated on behalf of respondent Nos. 3 and 4 that the petitioner stood terminated on 8th September 2022. Under such circumstance, the petitioner would be having his remedy elsewhere in view of this change in the circumstance. Therefore, this is not a fit case

where a writ can be issued under Article 226 and/or 227 of the Constitution of India.

11. The Writ Petition, therefore, stands dismissed.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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