

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7437 OF 2019 AND
CIVIL APPLICATION No. 14404 OF 2019 IN WP/7437/2019
CIVIL APPLICATION No. 764 OF 2022 IN WP/7437/2019

Shrimant S/o Karbhari Munde,
Age 37 years, Occupation : Service,
Assistant Teacher, Saraswati Primary
School, Parali, Taluka Parli, Dist. - Beed

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through the Principal Secretary,
Education and Sports Department,
Maharashtra State,
Mantralaya, Mumbai 400 032
- 2] The Commissioner of Education,
Maharashtra State, Pune
- 3] Director of Education (Primary),
Maharashtra State,
Maharashtra State, Pune
- 4] The Deputy Director of Education
Aurangabad Region, Aurangabad
- 5] Zilla Parishad, Beed
Through its Chief Executive Officer,
District Beed.
- 6] The Education Officer (Primary),
Zilla Parishad, Beed
- 7] The Headmaster,
Saraswati Primary School Parli,
Taluka Parli Vaijnath, Dist. - Beed
- 8] Saraswati Shikshan Sanstha
Parli Vaijnath, Taluka Parli,
District Beed, through
its Secretary

.. Respondents

...

Advocate for petitioner / applicant : Mr. Sambhaji G. Munde
AGP for the respondents nos. 1 to 4 : Mr. S.B. Yawalkar
Advocate for the respondents nos. 5 and 6 : Mr. K.B. Jadhavar
Advocate for respondent no. 7 : Mr. Shambhuraje V. Deshmukh

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 03 OCTOBER 2022
PRONOUNCED ON : 14 OCTOBER 2022**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith.

2. Learned AGP waives service for respondents nos. 1 to 4. Mr. Jadhavar waives for respondents nos. 5 and 6 and Mr. S.V. Deshmukh waives service for respondent no. 7. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is seeking approval to his appointment as a teacher by the respondent no. 8 - management of the school of which the respondent no. 7 is the headmaster.

4. The learned advocate for the petitioner Mr. Munde would submit that the petitioner was duly appointed on the post of Shikshan Sevek from N.T. category pursuant to a public advertisement dated 07-04-2010 by the order dated 16-04-2010. His appointment with effect from 16-04-2010 to 15-04-2013 was also approved by the respondent no. 6 - Education Officer. Without sufficient reason, the respondent no. 4 by the impugned order has cancelled the approval for untenable reasons. The law does not require any no objection of the Education Department before undertaking a recruitment process.

There was a public advertisement issued in daily 'Vaidyanath Varta'. Since the recruitment was to fill in the post reserved for backward classes, as held by this Court in Writ Petition no. 8587 of 2016 with connected matters, in the matter of *Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra Through Secretary and Others* decided on 10-07-2017, approval could not have been revoked and, therefore, the impugned order is not sustainable.

5. Mr. Munde would submit that few other teachers who were appointed in the same recruitment process and whose appointment was subsequently approved, namely, Shri P.B. Kendre and Shri G.P. Kolhe has not been revoked. There was no reason to take a different view in respect of the petitioner more so by referring to the validity of the recruitment process.

6. The learned AGP would submit that although the appointment of the petitioner was approved by the then Education Officer (Primary), it is pursuant to the directions of this Court in Writ Petition no. 6982 of 2017, that the impugned order was passed by extending an opportunity to the petitioner and even granting the opportunity to the management through the Headmaster, of being heard. He would submit that the objective decision has been taken by examining the record that at the relevant time, there was only 1 vacancy of S.T. candidate and the petitioner though belonged to N.T.

category, was appointed against the S.T. category. There was no material regarding any intimation having been given to the Education Officer in compliance with section 5 of the Maharashtra Employees of Private Schools (Conditions of Service), Act, 1977 and Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (hereinafter referred to as **the MEPS Act** and **the MEPS Rules**). Considering the staffing pattern, the vacancies and in the absence of any evidence regarding compliance with the provisions of section 5 and rule 9 of the MEPS Act and the MEPS Rules, the impugned order is unassailable.

7. The learned AGP would submit that the petitioner is not entitled to seek parity with the other two candidates Mr. Kendre and Mr. Kolhe, who were not appointed against a different category. Kendre was O.B.C. whereas Kolhe was recruited against an open post. It was also found that at the relevant time, as per the roaster there was backlog of posts of one S.T. category and one O.B.C. category and steps ought to have been taken to fill the backlog of those two categories which the management had failed to undertake as per the roaster which was duly approved on 08-01-2007.

8. On behalf of the management - respondent no. 7, Mr. Deshmukh would also submit that the appointment of the petitioner was not made by following necessary procedure as is required by the

MEPS Act the MEPS Rules and the impugned order is passed validly for the right reasons.

9. In rejoinder, Mr. Munde would submit that since the petitioner also belongs to a reserved category, the post is interchangeable in view of the provision of Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (**S.C. and S.T. Act, 2001**) in view of the provision of sub-section 3 of section 4. He would also rely upon a decision of this Court in the matter of *Sarode Jalindar Devram Vs. Saraswati Vidya Mandir and others* (Writ Petition no. 1552 of 2001 decided on 15-07-2009)

10. The rival submissions now fall for our consideration.

11. Since it is a matter of objectively scrutinizing validity of the appointment of the petitioner, it is imperative for us to bear in mind the scope and ambit of the provisions of section 5 of the MEPS Act and Rule 9 of the MEPS Rules. The provisions read as under :-

“Section (5). Certain obligations of Management of private Schools.

(1) The Management shall, as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy;

Provided that unless such vacancy is to be filled in by promotion, the management shall, before proceeding to fill

such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.”

“Rule (9). Appointment of staff.

...

- (2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee:

Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.

- (2A) The management of the private school shall advertise the vacancies for the post of teacher in details of subjects, with Bindunamavali on the online software programme developed by the Government or an agency authorized by the Government in at least one local newspaper having wide circulation in the region, and also notify the vacancies to the Employment Exchange Centre of the District and District Social Welfare Officer.

- (2B) (as it originally stood prior to amendment dated 08-06-2020.)

The said advertisement shall be kept open for at least fifteen days before filling of the concerned post. A candidate can apply for vacant post in response to the said advertisement through online process or by an application in writing giving details regarding name, address, date of birth, educational and professional qualifications, experience etc., with the marks secured in the Aptitude Test. After completion of the period mentioned in the advertisement, the School Committee shall publish the merit list within five working days and select the candidate according to the merit list.

...

- (7) The Management shall reserve 52 per cent of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled

Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows, namely: -

(a)	Schedule Castes	13 per cent;
(b)	Scheduled Tribes	7 per cent;
(c)	De-notified Tribes (A)	3 per cent;
(d)	Nomadic Tribes (B)	2.5 per cent;
(e)	Nomadic Tribes (C)	3 per cent;
(f)	Nomadic Tribes (D)	2 per cent;
(g)	Special Backward Category	2 per cent;
(h)	Other Backward Classes	19 per cent;
	Total -	52 per cent.

- (7A) to fill up the posts by nomination, as specified in sub-rule (7), the management shall follow the category-wise and percent-wise reservation as provided in sub-section (2) of section 4 of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (Mah. VIII of 2014), and the Bindunamawali specified in Schedule D-1:

Provided that, to fill up the post by direct recruitment in Group C and Group D for district wise cadre in the districts as specified in Schedule D-6, an additional reservation shall be applicable for Schedule Tribe as specified in Schedule D-5:

Provided further that, the post of teachers in teh Schedule Areas as specified in Schedule D-6 of Thane, Nashik, Nandurbar, Dhule, Jalgaon, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli and Chandrapur districts shall be fill up from local candidates belonging to the Scheduled Tribes, possessing necessary educational qualifications, as decided by the State Government, from time to time;

- (8) If the posts specified in sub-rule (7) remain vacant after following the procedure specified in sub-rule (2A), the management shall adopt the procedure laid down in sub-rule (9) to fill up the said vacancies.
- (9) The posts specified in sub-rule (7) and clause (a) of sub-rule(10), shall not be filled in by the candidates belonging to the other castes, tribes, categories or classes, than the castes, tribes, categories or class for which the posts are reserved.

- (10)(a) The management shall reserve 33 per cent, of the total number of posts (or vacancies) of Heads and Assistant Heads for the members of Scheduled Castes, Scheduled Castes converts to Buddhism, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes and Special Backward Category as follows, namely :-

(i)	Schedule Castes and Scheduled Castes converts to Buddhism	13 per cent;
(ii)	Scheduled Tribes including those living outside the specified areas.	7 per cent;
(iii)	Denotified Tribes (A)	3 per cent;
(iv)	Nomadic Tribes (B)	2.5 per cent;
(v)	Nomadic Tribes (C)	3.5 per cent;
(vi)	Nomadic Tribes (D)	2 per cent;
(vii)	Special Backward Category	2 per cent;
		33 per cent.

”

It is trite that these provisions have a mandatory character to enable the Education Department of the State to keep a watch on the recruitment process for the obvious reason that such appointments would subsequently result in burdening the exchequer in the form of grants to be paid to the schools. The same is the case with Rule 9 which enables the State to monitor if the recruitment processes are being undertaken without paying necessary attention to clearing of the backlog in respect of appointments made against the categories reserved for backward classes.

12. True it is that in view of the decision in the matter of *Smt. Munoli* (supra), the recruitment process can be undertaken to fill in the backlog of the backward classes. Similarly, even the recruitment

process can be undertaken by the management for making appointments to fill up the vacancies for specific subjects, namely, English, Mathematics and Science. However, pertinently, this decision does not specifically dispense with the procedure to be followed in the light of the provisions of section 5 of the MEPS Act and Rule 9 of the MEPS Rules.

13. Assuming that the management in a given case can undertake recruitment process to fill up the vacancies for recruiting the teachers for English, Mathematics and Science, it is not the case of the petitioner or the management that the recruitment process in which the petitioner was recruited was undertaken with that understanding. Even the advertisement does not indicate that the posts were for recruiting the teachers to teach these subjects.

14. So far as the ground regarding the recruitment process having been undertaken to fill up the backlog of the backward classes, true it is that the advertisement was indicating that all the 5 posts belonged to the backward classes. However, the respondent no. 8 - management has specifically refuted about any such recruitment process having been undertaken much less to fill up the backlog.

15. Pertinently, even though the opportunity of being heard was extended to the petitioner as also the respondent no. 7 - Headmaster before passing the impugned order, neither of them were

able to produce any intimation to the Education Officer having been extended in compliance with section 5 or the management having ascertained the backlog by soliciting information under Rule 9 of the MEPS Rules.

16. Besides, the impugned order specifically reads on the basis of the objective material placed before the Deputy Director of Education that as per the roaster approved by the Backward Class Cell of the year 2007 and taking into account the subsequent vacancies at the time of publishing the advertisement, the roaster of that year was not got approved and as per the roaster that was approved in the year 2007 only 2 posts, 1 belonging to S.T. category and 1 of O.B.C. had remained to be filled in whereas the petitioner was purportedly appointed from N.T. category.

17. Though section 4(3) of the S.C. and S.T. Act, 2001 permits inter-changeability amongst the N.T. categories and the petitioner belongs to that category, once it is found that the vacancy for recruiting N.T. category candidate was not available, the petitioner is not entitled to derive any benefit from this provision.

18. In the normal course, once the petitioner's appointment was approved by the Education Officer, there would not have been any question of undertaking any reconsideration. But the impugned order, admittedly, has been passed pursuant to a direction given by this Court

and by extending an opportunity of being heard to the petitioner and the Headmaster.

19. So far as argument of Mr. Munde regarding parity with the other two candidates recruited in the same selection process is concerned, it is to be noted that in-fact, the legality or otherwise of their appointment is not in question. They are not even parties to the present petition.

20. In view of the above, the petitioner having miserably failed to demonstrate that he was appointed in the recruitment process undertaken by following the provisions of section 5 of the MEPS Act and Rule 9 of the MEPS Rules, no fault can be found with the objective finding arrived at in the impugned order recalling the approval granted to petitioner's appointment.

21. The writ petition is dismissed. Rule is discharged.

22. Pending civil applications are disposed of.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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