

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

WRIT PETITION NO. 9924 OF 2021

1. Late Annasaheb Tandale Shikshan
Prasarak Mandal
Through its President-
Namely Manohar Annasaheb Tandale,
Age 73 years, Occu: Legal Practitioner
R/o Ambelwadgaon Tq. Dist. Beed
2. Rajendra Raosaheb Khedkar
Age 51 years, Occu: Service as
Headmaster, Shri Chattrapati Shivaji
Vidhyalaya, Run by Late Annasaheb
Tandale Shikshan Prasarak Mandal
R/o Ambelwadgaon Tq. Dist. Beed
3. Navnath Ashok Sanap, ... **Petitioners**
Age 34 years, Occu: Service,
R/o Ambelwadgaon Tq. Dist. Beed

VERSUS

1. The State of MN\aharashtra,
Through Secretary, Education & Sports
Dept. Mantralaya, Mumbai 400 032
2. The Education Officer (Secondary) ... **Respondents**
Zilla Parishad, Beed.

Mr. D. R. Irale Patil, Advocate for the petitioners,
Mr. A. S. Shinde, AGP for the respondents

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 20th OCTOBER, 2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule, made returnable forthwith. With the consent of both sides, matter is heard finally at the stage of admission.

2. Heard Mr. D. R. Irale Patil, learned Advocate for the petitioners and Mr. A.S. Shinde, learned AGP for the respondents at length.

3. By this petition under Article 226 of the Constitution of India, the petitioners challenged the impugned order dated 27.08.2021 passed by respondent No.2 and prayed for issuance of directions to respondent No.2 to consider the proposal dated 09.08.2021 for approval to the appointment of petitioner No.3 Navnath Ashok Sanap for the post of Maths Teacher in Secondary Division.

4. Learned Advocate for the petitioners submitted that petitioner No.1 is running a school on 100% grant basis from the year 1997 from 5th Std. to 10 Std. On 06.12.2020, Mr. Bhimrao Shamrao Nagargoje who was appointed as teacher in Mathematics subject died during Covid pandemic, due to which the school was adversely affected as there was nobody to teach Mathematics subject in secondary division. On 8.12.2020, the Management immediately informed respondent No.2 about sad demise of Maths teacher Mr. Bhimrao Nagargoje and requested for permission to fill up the post of Maths teacher. However, respondent No.2 did not act upon the said proposal for a considerable period. Due to urgency of the Management, advertisement to fill up the post of Maths teacher was published. In response to the said advertisement, petitioner No.3 and other candidates submitted their candidature for appointment to the post of Science (Maths) teacher and

after conducting interview, petitioner No.3 came to be appointed under appointment order dated 30.06.2021 on probation for the academic year 2021-2022. Thereafter, on 09.08.2021, the Headmaster of the school submitted a detailed proposal to respondent No.2 for approval to the appointment of petitioner no.3. However, on 17.08.2021, respondent No.2 refused to accord approval on the ground that, appointment of petitioner No.3 has been made on non grant basis as Shikshan Sevak on fixed pay of Rs.8000/- though post of teachers are required to be filled up through Pavitra Portal and since the appointment is made contrary to the guidelines of Government Resolutions dated 23.06.2017 and 07.02.2019, hence, approval cannot be granted to the said appointment on non grant basis.

5. Learned counsel appearing for the petitioners submitted that on 30.01.2019, respondent No.2 approved staffing pattern for teaching and non teaching staff and appointment of one Bhimrao Shamrao Nagargoje was made a Science (Maths) teacher was approved. However, on 06.12.2020, the said teacher expired during Covid Pandemic. Therefore said post had become vacant. Therefore, on 08.12.2020, petitioner No.1 submitted a proposal for permission to appoint teacher for Maths subject. But respondent No.2 failed to consider the said proposal for a considerable period and therefore, the management-petitioner No.1 published an advertisement in local

newspapers for appointment of a suitable candidate and after conducting due selection process, petitioner No.3 Navnath Sanap who is qualified as B.Sc. B.Ed. (Maths) came to be selected and appointed under appointment order dated 30.06.2021 in the pay scale of Rs.41800-132300/-. Accordingly, petitioner No.2 submitted the proposal for approval to the said appointment with respondent No.2. However, on 09.08.2021, respondent No.2 erroneously passed the order and turned down the proposal for approval to the said appointment though the management is having power to appoint teacher. Therefore, the impugned order dated 09.08.2021 passed by respondent No.2 is illegal, bad in law and prayed to quash and set aside the same.

6. In support of the said submissions, the learned counsel for the petitioners relied on the judgment in case of **Stree Shikshan Prashrak Mandal, Nagpur & Ors. Vs. State of Maharashtra and others (2019 Mh.L.J. 223)**. The learned counsel for the petitioners also relied on the following unreported judgments.

- (1) Chandane Kishor Digambar & Anr. Vs. The State of Maharashtra in Writ Petition No. 8532 dated 23.08.2017.
- (2) Mallinath Melgiri Kante Vs. The State of Maharashtra and others, Writ Petition No. 7878 of 2016 with connected petitions, dated 14th July, 2015.
- (3) Shubhangi Bhagwat Chate & ors. Vs. State of Maharashtra and others, Writ Petition No. 9709 of 2016 dated 23.11.2017.

7. Per contra, the learned AGP submitted that petitioner No.2 School is running on 100% grant-in-aid basis and the State Government, from time to time, issued Resolutions dated 23.07.06.2017 and 07.02.2019 in respect of appointment of Assistant teachers. However, the petitioners failed to comply with the said Government Resolutions and issued appointment orders in favour of petitioner no.3 in contravention of the Government Resolutions. The school running on grant-in-aid basis are required to appoint candidate who are available on Pavitra Portal. The school is required to report vacancies on the Pavitra Portal prior to appointment of any candidates. However, in the case in hand, petitioner No.1 Education Society neither reported Advertisement on Pavitra Portal nor appointed a candidate who is eligible and enrolled on the Pavitra Portal. Therefore, the order dated 17.08.2021 passed in adherence to the Government Resolution dated 23.06.2017 and 07.02.2017, declining to accord approval to the appointment of the petitioner No. 3 is just and proper.

8. In support of the submissions, learned AGP placed reliance on the judgment dated 03.08.2021 passed by this Court in Writ Petition No. 3142 of 2020 (Pravin Bodhu Kasbe Vs. The State of Maharashtra & ors.), wherein, in paragraph 10, this Court has held as under:

"10. In view of the above, this petition is dismissed. However, we find it appropriate to issue certain directions to the Principal Secretary, Department of School Education, State of Maharashtra as under :

(i) The Government Resolution dated 23.06.2017 shall be scrupulously followed without any exception.

(ii) Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981, by which amendment has been introduced pursuant to the judgment in P.I.L. dated 24.06.2015, mandating the publication of advertisement, besides the Pavitra Portal, in two widely circulated newspapers, out of which, one should be a local newspaper having wide circulation in the region, should be strictly implemented.

(iii) All Education Officers in the State of Maharashtra and all concerned authorities shall be directed by the department of School Education that they shall scrupulously follow the Government Resolution dated 23.06.2017 and Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and no appointment in violation of any of these provisions shall be approved.

(iv) The State Government should also intimate the authorities that any person guilty of such violation would be subjected to strict disciplinary action. So also, action be initiated against such Managements, who flout these rules and the Government Resolution."

9. It is not in dispute that petitioner No.1 Education Society is running a School under the name and style 'Shri Chattrapati Shivaji Vidhyalaya, run by Late Annasaheb Tandale Shikshan Prasarak Mandal' at Ambelwadgaon Tq. Dist. Beed on 100 % grant in aid basis and one

Bhimrao Shamrao Nagargoje who was appointed as Assistant Teacher for Maths subject died on 06.12.2020 during Covid Pandemic. Therefore, the said post fallen vacant and on 08.12.2020, respondent No.2 submitted a proposal with respondent No.2 for permission to fill up the post of Maths teacher. No doubt, on 08.12.2020, the said proposal is received by respondent No.2. On 23.06.2021, the petitioner No.1 then published advertisement in Dainik Citizen having circulation in Beed District and invited applications for appointment of teachers in secondary/primary school. Thereafter on 30.06.2021, Petitioner No.1, on conducting interview, issued appointment order in favour of petitioner No.3- Navnath Ashok Sanap. Thereafter, on 09.08.2021, petitioner No.2 submitted a proposal for approval to the appointment of petitioner No.3. As per the Government Resolution dated 07.02.2019, it is mandatory on the part of Education Society to publish advertisement, besides the Pavitra Portal, in two widely circulated newspapers, out of which one should be local newspaper having wide circulation in the region and all Education Officers in the State of Maharashtra requires to scrupulously follow the Government Resolution dated 23.06.2017 and Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules 1981 and no appointment in violation of any of these provisions shall be approved. However, in the case in hand, it prima

facie appears that on 06.12.2020, maths teacher Bhimrao Nagargoje died and immediately on 08.12.2020 respondent No.2 sought permission to fill up the said post without reporting vacancy on Pavitra Portal as per Government Resolutions dated 23.06.2017 and 07.02.2019. Petitioner No.1 and 2 have also not called the names of surplus teachers and not complied any mandatory conditions of Government Resolution dated 07.02.2019 and in utter violation of the said guidelines, petitioner Nos. 1 and 2 appointed petitioner No.3. The guidelines laid down in the case of **Pravin Bodhu Kasbe** cited supra and the procedure are not followed by petitioner No.1 Education society while appointing petitioner No.3. Therefore, respondent No.2 passed the impugned order on 17.08.2021 and rejected the proposal of the petitioners for grant of approval to the appointment of petitioner No.3, which does not appear to be illegal and no substantial ground set out by the petitioners to interfere with the impugned order, hence, the present petition deserves to be dismissed. Accordingly, we proceed to pass following order:-

O R D E R

Writ petition stands dismissed. No order as to costs.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan