

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12528 OF 2017

Smt. Savita Somnath Gunjal,
Age : 37 years, Occ. Service,
R/o. Gunjalwadi, Post. Rajapur
Tq. Sangamner, Dist. Ahmednagar

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Bombay – 32.
- 2] The Director of Education,
Pune Division, Pune – 1,
Dist. Pune
- 3] The Deputy Director of Education,
Pune Division, Pune – 1,
Dist. Pune
- 4] The Education Officer (Secondary),
Zill Parishad, Ahmednagar,
Dist. Ahmednagar
- 5] Netaji Subhashchandra Bose
Gramin Vikas Mandal,
At. Post. Dongargaon, Tq. Akole,
Dist. Ahmednagar,
Through its Secretary
- 6] Netaji Subhaschandra Bose
Madhyamik Vidhyalaya, Dongargaon,
Tq. Akole, Dist. Ahmednagar,
Through its Head Master
- 7] Rajesh Santu Sahane,
Age : 40 years, Occu. Service,
C/o. Netaji Subhashchandra Bose
Madhyamik Vidhyalaya Dongargaon
Tq. Akole, Dist. Ahmednagar

.. Respondents

...
Advocate for petitioner : Mr. S.K. Shinde
AGP for respondents nos. 1 to 4 – State : Mr. K.N. Lokhande
Advocate for the respondent no. 5 and 6 : Mr. Shivaji T. Shelke
Advocate for respondent no. 7 : Mr. P.B. Shirsath h/f. Mr. S.S. Wagh
...

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

**RESERVED ON : 27 SEPTEMBER 2022
PRONOUNCED ON : 03 OCTOBER 2022**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Mr. Lokhande, AGP waives service for respondents nos. 1 to 4, Mr. S.T. Shelke waives service for respondents nos. 5 and 6 and Mr. Shirsath h/f. Mr. Wagh 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 was appointed as a Graduate Trained Teacher by respondent no. 5 - management on 13-07-2005. She is aggrieved by the approval granted by the respondent - Education Officer to the appointment of the respondent no. 7 in preference to her and is seeking approval to her own appointment.

4. The learned advocate Mr. Shinde would submit that the petitioner was duly appointed by following all the necessary procedure prescribed under the Maharashtra Employees of Private Schools

(Conditions of Service) Act (MEPS Act) and the rules framed thereunder. She was duly qualified and the management ought to have forwarded her proposal. She had to file a writ petition in this Court and pursuant to the directions of this Court, the respondent - Education Officer was called upon to decide her case for grant of approval. In the meantime, the respondent no. 7 was appointed by the respondent no. 5 - management even when there was no vacancy and the proposal for grant of her approval was rejected by the Education Officer on 31-12-2014. The respondent no. 7 had filed writ petition in this Court and the petition was disposed of by directing the respondent no. 5 - management to respond to the queries being raised and to submit a fresh proposal. However, while that petition was being decided, the respondent - management had not pointed out the order passed by this Court in the petitioner's petition. Ultimately, the proposal regarding petitioner's appointment was forwarded. Resultantly, instead of considering and granting approval to the appointment of the petitioner, the respondent - management managed to forward the respondent nos. 7's proposal even when there was no vacancy and which has resulted in granting approval to the latter's appointment, thereby closing all the doors for the petitioner.

5. The learned AGP would support the orders and submit that only one post was vacant and the management could have filled it but the appointment of the petitioner was never made by following necessary procedure as prescribed by section 5 of the MEPS Act read with rule 9 and, therefore, there is no question of grant of approval to her appointment.

6. The learned advocate for the management would submit that though the petitioner was appointed on 13-07-2005, the proposal was sent for approval to her appointment on 25-06-2010. The respondent - Education Officer sought certain clarifications which could not be complied and consequently she was terminated from service on 06-10-2015 since the Education Officer had not granted approval to her appointment. However, considering the valuable services rendered by her for more than 10 years, the management subsequently withdrew the termination as indicated in the affidavit in reply.

7. The learned advocate for the respondent no. 7 would submit that pursuant to the directions of this Court in writ petition no. 11576 of 2015 in her petition, the Education Officer by the order dated 04-10-2016 has granted approval to her appointment strictly in accordance with law. The appointment of the petitioner was illegal and the Education Officer rightly refused to grant approval for variety of reasons mentioned in the impugned communication dated 29-03-2017.

8. We have carefully considered the rival submissions and perused the papers.

9. It does appear that the petitioner was appointed first in point of time and respondent no. 7 was appointed thereafter. This Court in the writ petition filed by the petitioner had directed the management to forward the proposal for grant of approval to her appointment and had called upon the Education Officer to consider it. It is also a matter of record that after such order was passed in favour of the petitioner, the respondent no. 7 had approached this Court and a direction was issued to the management and the Education Officer to consider approval to her appointment. It is pursuant thereto, the approval has been granted to the appointment of the respondent no. 7 and subsequently by the impugned communication, petitioner's appointment has not been approved.

10. A careful perusal of the order of the Education Officer in respect of the petitioner clearly reveals that he has quoted as many as 14 reasons for refusing to grant the approval. Apart from some technical compliances, it was specifically pointed out that no record was furnished to him to demonstrate availability of a sanctioned post. A copy of the permission / intimation to his office was not produced. There was no record to demonstrate about the management having ascertained the backlog of reserved category candidates. There was

no evidence regarding publication of a notice and regarding call letters having been issued to the candidates responding to the advertisement and even the roaster was not got approved.

11. In view of such specific and precise grounds, when we asked the learned advocate for the petitioner as also the learned advocate for the respondent - management to point out to us the record to refute the aforementioned grounds, they have been unable to do so. The importance of intimating the Education Officer before undertaking a recruitment process, as is required by section 5 of the MEPS Act and rule 9 of the rules framed thereunder need not be over-emphasized. The procedure is mandatory and has to be followed by the management before undertaking a recruitment process. The whole process of providing for such a procedure is, firstly, to obviate any undesired recruitment even without sanction of the post, fair opportunity to the persons eligible to apply for appointment and to see to it that reservation policy is followed in letter and spirit.

12. In view of absence of concrete material either before the Education Officer or before us regarding compliance with these provisions, we are afraid, we cannot issue any mandamus directing the Education Officer to reconsider the petitioner's case. We see no apparent illegality or perversity in the decision taken by the Education Officer refusing to grant approval to the petitioner's appointment.

13. In view of the aforementioned facts and circumstances, we deem it inappropriate to enter into the controversy as regards the appointment of the respondent no. 7. The petition is dismissed.

14. Rule is discharged.

[SANDEEP V. MARNE]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE