

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

**WRIT PETITION NO.14278 OF 2018
WITH
CIVIL APPLICATION NO.5069 OF 2019**

Dipali d/o Narayanrao Nikam,
Age : 31 years, Occu.: Service,
R/o.: Panditrao Bhikanrao Jadhav, 263,
Mahada Colony, Shivaji Nagar,
Bhokardan Naka, Jalna,
Tq. & Dist.: Jalna PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of School Education & Sports,
Mantralaya, Mumbai - 32
2. The Deputy Director of Education,
Aurangabad Region near Bhadkal Gate,
Aurangabad, Tq. & Dist.: Aurangabad.
3. The Education Officer (Secondary),
Zilla Parishad, Jalna
4. Shivaji Shikshan Sanstha Dabhadi,
Tq. Badnapur, District : Jalna
5. Shivaji Vidhayalaya & Higher Secondary School,
Dabhadi, Tq. Badnapur, Dist. Jalna,
Through it's Head Master /Principal RESPONDENTS

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Advocate for Petitioner : Mr. R. I. Wakade
AGP for Respondent Nos.1 to 3 : Mr. P. S. Patil
Advocate for Respondent Nos. 4 & 5 : Mr. D. R. Irale Patil
Advocate for Applicant : Mr. C. V. Patil (in CA No.5069/19)

CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.

DATED : 11 JULY 2022.

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ORAL JUDGMENT (PER C. V. BHADANG, J.):

Rule. Rule made returnable forthwith. The learned AGP and learned counsel for the respective parties waive service. Heard finally with consent of the parties.

2. The petitioner is challenging the communication / order dated 22 November 2018 passed by respondent No.3 - Education Officer, thereby refusing approval to the appointment of the petitioner in the respondent school for the reasons : i) non-obtaining of permission prior to the issuance of the advertisement, ii) a ban on recruitment against aided post as imposed by government resolution dated 2 May 2012, 3) the absence of permission from the government to fill up the posts of teachers teaching mathematics /science as per government resolution dated 4 September 2013 and lastly iv) that the proposal is not in the prescribed format as per government resolution dated 6 February 2012.

3. We have heard the learned counsel for the parties.

4. The learned counsel for the petitioner has placed reliance on the decision of this court in a batch of writ petitions bearing Writ Petition No.8587 of 2016 (Smt. Munoli Rajashri Karabasappa vs. State of Maharashtra through Secretary and others), decided on 10 July 2017

(Principal Seat), in order to submit that this court had directed the Education Officers to examine independent cases and grant approval to each of the teachers who fall in any of the three categories namely:

- (a) Where the recruitment process is already commenced prior to GR dated 2 May 2012;
- (b) where the appointments are made for filling up vacancies in English, Mathematics and Science; and
- (c) where the recruitment is made to fulfil the backlog of reserve categories candidates.

5. The learned counsel for the petitioner states that the petitioner is teaching Mathematics and Science subjects to 8th to 10th standard and therefore, falls within, one of the categories, as stipulated by this court in judgment and order dated 10 July 2017. Secondly, it is submitted that permission was sought, but as the said application was not processed by the Education Officer, the advertisement came to be issued on 1 June 2013 and after following due procedure, the appointment is made. He submits that the petitioner was terminated in the interregnum, which he had challenged before the School Tribunal, where a compromise was reached between the management and the petitioner, whereby he has been reinstated in service. He submits that the reasons shown by the Education Officer in the affidavit in reply, are beyond those, in the impugned order, which is impermissible in view of the decision of the Supreme Court in *Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi, A.I.R. 1978 SC 851*. He has also relied upon the decision of this Court in *Sunita Haridas Dhait vs. B. R. Ambedkar Shikshan Sanstha*

and others (Dr.), 2005 (20 Bom.C.R. 761, wherein the Division Bench in similar circumstances placing reliance on the decision of the Supreme Court in *Mohinder Singh Gill 's* (supra) case, had directed the Education Officer to reconsider the matter.

6. The learned AGP has submitted that the Education Officer in the impugned order as well as the reply filed has set out the reasons for refusal. He pointed out that the application for seeking permission to advertise the post, was sent on 30 May 2013 and immediately on the next day i.e. 1 June 2013, the advertisement was published, which is only in order to create a ground that the permission was sought.

7. Both the parties sought time to rely upon some further judgments, according to the learned counsel for the respondents in a case where the advertisement was issued two days after seeking permission, certain relief was granted.

8. Upon hearing the learned counsel for the parties, we find that normally we will have to confine to the reasons set out by the Education Officer while refusing to grant approval. The reasons cannot normally be permitted to be augmented or amplified by virtue of filing reply. It is necessary to emphasize that principally the Education Officers are required to examine the proposal in the light of the applicable provisions and the government resolutions as may be applicable and then to decide the issue of grant of approval. Considering the nature of the facts pointed out and the submissions made during the course of argument and the reliance placed on the decision of this court in Writ Petition No.8587 of

2016, we find that it would be appropriate for the Education Officer to reconsider the matter for grant of approval. In the result, the petition is partly allowed. The impugned order is set aside.

The Education Officer shall reconsider the proposal for grant of approval on its own merits and in accordance with the law, within a period of six weeks from today.

9. It would be open to the Education Officer to hear the management and / or the representative of the petitioner and to require compliance, if found necessary.

10. Rule is made absolute in the above said terms.

11. Civil Application No.5069 of 2019 stands disposed of.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

VS Maind/-