

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 1288 OF 2018**

|                                 |     |                    |
|---------------------------------|-----|--------------------|
| Vrishali Lalesh Kanse           | ... | <b>Petitioner</b>  |
| Versus                          |     |                    |
| The State of Maharashtra & Ors. | ... | <b>Respondents</b> |

Mr. Saurabh Pakale i/b. Mr. Shankar M. Katkar, Advocate  
for the Petitioner.

Smt. P. N. Diwan, AGP for the Respondents/State.

**CORAM: S.V. GANGAPURWALA &  
MADHAV J. JAMDAR, JJ.**

**DATED : JUNE 8, 2022**

P.C.

1. The petitioner claims to have been appointed on 5<sup>th</sup> August 2013. The proposal seeking approval to the appointment of petitioner as Shikshan Sevak is rejected under the impugned order. The order is at page 33. The same is rejected on the ground that no objection of the Education Department was not obtained. There is a backlog of reserved category candidates. The advertisement was for the post of Scheduled Castes and Scheduled Tribes whereas the appointment is made from the open category.

2. The learned Counsel submits that the application seeking permission to fill in the posts had been given to the respondent on 12/11/2012. Subsequent thereto, three applications were given. No response was received thereto. The advertisement was published in local newspaper on 30<sup>th</sup> July 2013. Pursuant to the advertisement in newspaper, the petitioner was selected and appointed to teach

Mathematics subject. The advertisement was especially issued for the candidates to teach mathematics subject. According to the learned Counsel, the post for the general category candidate was available on the relevant date.

3. The learned AGP submits that procedure as contemplated under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as, “**MEPS Act**”) and Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as, “**MEPS Rules**”) is not adhered to. No permission from the Education Department is obtained by the Management.

4. We have gone through the order.

5. The petitioner was appointed to teach Mathematics subject. It appears that the Management had given application seeking permission to fill up the vacant post. The first application was dated 12/11/2012. The same was not replied by the Education Department. Thereafter, thrice the applications were given. Education Officer did not reply nor sent surplus candidates to the institution for absorption. Eventually, the advertisement was issued on 30<sup>th</sup> July 2013.

6. The reliance is placed by the petitioner on the judgment of the Division Bench of this Court in **Smt. Munoli Rajashri Karabasappa Versus State of Maharashtra & Ors.**<sup>1</sup> to contend that the ban on recruitment would not apply for the appointment of teachers for teaching Mathematics,

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1 Writ Petition No. 8587 of 2016 with connected Petitions, Dated 10<sup>th</sup> July 2017.

English and Science subjects. Moreover, the schools are not expected to run without teachers for a longer period. It was the Education officer who did not act upon the applications given by the Management seeking permission to fill up the post of teachers to teach English, Mathematics and Science which could have been filled in as per the observations of the Division Bench in **Smt.Munoli Karabasappa** (*supra*). The advertisement was issued after filing the application seeking permission to fill up the posts. The Education Officer ought to have considered the applications so also whether the post was available for general category. If the post was also available for general category then only because some posts were meant for Reserved category could not have been sufficient to negate the claim of the petitioner. The vacancy for post of open (general category) is required to be considered.

7. In the light of the above discussion, impugned order is quashed and set aside. The Education officer shall consider the application for approval to the appointment of the petitioner in the light of the observations made herein above and shall decide the same on its own merits expeditiously preferably within six months.

8. The Writ Petition is accordingly disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)

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