

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6775 OF 2021

1. Ms. Madhuri Haribhau Vishe @ Madhuree
Kamlakar Jagare
Aged 40 years, Occ. Service,
R/o. A/P Nadgaon,
Tal. Shahapur, Dist. Thane.

2. Shahapur Taluka Education
Society, Shahapur,
Dist. Thane, Through its
Secretary

..Petitioners

V/s.

1. The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai -400 032.

2. The Deputy Director of Education,
Mumbai Region, Mumbai

..Respondents

Mr. N. V. Bandiwadekar a/w. Mr. Vinayak Kumbhar & Mr. Ajinkya
Navale i/b Mrs. A. N. Bandiwadekar for the Petitioners.
Mr. N. C. Walimbe, AGP for the Respondent-State.

**CORAM : SUNIL B. SHUKRE AND
G. A. SANAP, JJ.**

DATE : 21 MARCH 2022.

JUDGMENT: (Per Sunil B. Shukre, J.)

Heard.

2. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

3. There are three reasons given in the impugned order for not granting approval to the appointment of the petitioner as Assistant Teacher. These reasons are as follows:

- a) The relevant roster was not verified by the Backward Class Cell.
- b) The backlog of reserved candidates was not filled up.
- c) Appointment of the petitioner was not made through Pavitra Portal system brought in existence by Government Resolution dated 23/6/2017.

4. As regards the first reason, we find that it does not survive as the roster dated 30/11/2018 has been duly verified by the Backward Class Cell as per its report filed on record. Therefore, the first reason goes away.

5. About the second reason we must state that the issue is no longer *res integra* as the view taken by learned Single Judge of this Court in case of *the President, Sudhagad Education Society, Dist. Raigad and others Vs. The Deputy Director of Education and another, in Writ Petition No.4635 of 2009 together with connected matter decided on 16th July, 2009* has been confirmed by the Apex Court and it has also been followed by different Division Benches including this Court. This view has been recently followed by this Court in the case of *Vishnu Pundalik Patil*

vs. State of Maharashtra in Writ Petition No.1997/2015. According to this view even though the backlog of reserved candidates exists, the open category posts can be filled up if they are available at the relevant time. In the instant case, it is not in dispute that there were 9 posts available in the open category at the point of time when the petitioner was appointed in the open category. Therefore, the second reason stated in the impugned order also does not survive.

6. In respect of third reason, we find that Government Resolution dated 23/6/2017 itself shows that the reason so stated in the impugned order is wrong. The Government Resolution clearly shows that it is applicable to only those schools which are aided, partly aided and which are declared to be eligible for receiving grant-in-aid. Without any dispute, the petitioner has been appointed in an unaided school and therefore, the said Government Resolution would have no application to the appointment of the petitioner.

7. In view of the above, we find that the impugned is illegal and deserves to be quashed and set aside.

- i. The petition is therefore allowed in terms of prayer clause (b);
- ii. The approval order shall be issued within a period of four weeks from the date of receipt of a copy of the judgment;
- iii. Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

(SUNIL B. SHUKRE, J.)