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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 137 OF 2020

Haidarali Abdul Shaikh

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Ms. Devyani Kulkarni for the Petitioner

Mr. Kedar Dighe, AGP for the Respondent - State

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

DATE : 22 MARCH 2022

P.C. :-

Heard the learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. Taken up for final disposal by consent of the learned Counsel for the parties.

3. The approval to the appointment of the Petitioner as a Full Time Teacher, which was made by the Respondent No.4 – College with effect from 1 August 2015 has been refused by the Education Officer on the ground that the school management failed

to fill up the backlog of different posts of different reserved category posts.

4. Neither the Petitioner nor the school management has filed on record an updated roaster, which is duly verified by the Backward Classes Cell and therefore, it is difficult to ascertain the legality or otherwise of the reason stated in the impugned order but, there is one more aspect which in our opinion is more important than the need for filling up the backlog of the seats of the school management. This aspect pertains to availability of one post of full time teacher which was reserved for the scheduled tribe category. This seat was filled on 1 August 2016 when its occupant, Vilas Songire reached the age of superannuation. He was a teacher with scheduled caste reserved category background but according to the learned Counsel for the Petitioner, he was appointed on an open post and it was this post, which was filled up by giving appointment to the Petitioner with effect from 1 August 2016. However, if we consider the advertisement which was published in the local newspaper dated 15 November 2017, we find that the post that was advertised was meant for the scheduled tribe candidate. It is not in dispute that it was only as per this advertisement that the appointment of the Petitioner as a full time teacher is made. It is now clear that the Petitioner, who is an open category candidate, was selected and appointed on a post which was reserved for schedule

tribe candidate and there is no material on record from which it could be said that during the interregnum there has been de-reservation of the posts of full time teacher initially reserved for scheduled tribe category candidate. In fact, there is a long drawn procedure which is required to be followed before the post is converted into de-reserved post. In any case, there is no material available on record which shows that this post which was advertised for the reserved category candidates was de-reserved subsequently on account of non-availability of reserved category candidate inspite of making of several attempts to fill up that post from amongst the reserved category candidates.

5. Thus, we find that appointment of the Petitioner as a full time teacher itself was something not permissible in law and such being the case here, we find no infirmity in the impugned order which refuses approval to the appointment of the Petitioner, may be for different reason. The fact would always be there that the appointment of the Petitioner, as an open category candidate having been made on a post reserved for scheduled tribe, in the absence of any de-reservation having taken place, cannot be approved. For this view, we would like to draw support from the observations of the Supreme Court in the case of ***Mandeep Kumar and Ors. v/s. U.T. Chandigarh and Ors. (Civil Appeal No. 1908 of 2022 decided on 9 March 2022)*** made in paragraph 20 of the judgment.

6. In the result, the Petition deserves to be dismissed. The Petition stands dismissed accordingly.

7. Rule is discharged. No costs.

G.A. SANAP, J.

SUNIL B. SHUKRE, J.

JYOTI
PRAKASH
PAWAR

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