

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 4316 OF 2018**

Sarvesh s/o Anil Rathi,  
aged about 32 years, Occ. Shiksan Sewak,  
R/o Sirasgaon Kasba,  
Tahsil – Chandur Bazar, District – Amravati.

**PETITIONER**

**.....VERSUS.....**

1. The Deputy Director of Education,  
Amravati Division, Amravati.
2. The Public Welfare Society,  
Registration No. F-88,  
Rashtriya High School & Jr. College of Science,  
Chawalmandi Dewadi, Achalpur City,  
Tah. Achalpur, District Amravati, thr. its Secretary.
3. Principal, Rashtriya Higher Secondary School,  
Chawalmandi Dewadi, Achalpur City,  
Tahsil Achalpur, District – Amravati.

**RESPONDENTS**

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Shri N.R. Saboo, Advocate for the petitioner.  
Ms. N.P. Mehta, A.G.P. for respondent No.1/ State.  
Shri M.G. Rathi, Advocate for respondent Nos. 2 and 3.

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**CORAM : A.S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.**

**DATE : JULY 27, 2022**

**ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)**

**RULE.** Rule made returnable forthwith and heard the learned  
Counsel for the parties.

2. The challenge raised in this Writ Petition is to the order dated  
28/8/2017 passed by the Deputy Director of Education, Amravati  
Division, Amravati refusing to approve the appointment of the petitioner

on the post of Teacher at respondent No.3 – School run by respondent No.2 – Society.

3. The facts in brief are that the Management sought permission of the Deputy Director of Education for undertaking recruitment at its School. On 24/12/2014, it was noted by the Deputy Director of Education that there were four vacancies available at the School. There was a backlog of two posts in the Scheduled Caste category and one post in the Other Backward Class category. Permission was accordingly granted to fill in two posts. The Management accordingly issued an advertisement advertising the said two posts. One post of full time Junior College Teacher was kept for the candidates from the open category. For that post, qualifications of MA (English), MA (Hindi) and B.Ed were prescribed. Since the petitioner claimed to be duly qualified, he applied pursuant to the said advertisement. In the meeting of the School Committee held on 21/2/2015, it was resolved to appoint the petitioner on that post. The petitioner was accordingly issued an order of appointment on 21/2/2015. While approval was granted to the Junior College Teacher who was appointed on one reserved post, the appointment made on the open category post was refused on the ground that there was a backlog of candidates from the reserved category and full time workload in the subject of Hindi was not available. The Management

entered into communication with the office of the Deputy Director of Education and on 28/10/2016 furnished its explanation with regard to the reasons for refusal of such approval. It was stated that insofar as the workload of Hindi was concerned, the petitioner had completed post graduation in the subject of English and therefore the workload for the subjects of Hindi and English could be given to the petitioner. The Deputy Director of Education re-considered the matter and on 28/8/2017 again refused to grant approval to the petitioner's appointment. The reasons given were that as there was a backlog, the appointment from the open category could not be made and secondly, it was not indicated that the educational qualifications obtained by the petitioner were from a recognized University.

Being aggrieved by the aforesaid rejection, the petitioner has challenged the same.

4. It is submitted by the learned Counsel for the petitioner that merely because there was a backlog at the Institution, the same could not be a reason for refusing to appoint the petitioner who had been so appointed after obtaining permission from the office of the Deputy Director of Education. It was clear that there were four vacant posts and there was a backlog with regard to two posts from the Scheduled Caste

category and one post from the Other Backward Class category. Inviting attention to the decision in *Namita Narayan Jha Vs. Education Officer, (Secondary) Zilla Parishad, Gondia and others* [2014(3) Mh.L.J. 680], it was submitted that since the petitioner had been appointed after advertising the post, approval could not be refused only on account of existence of backlog. Refusal to grant approval on that count was not sustainable. Insofar as the second ground on which the approval was refused that the University from which the petitioner had obtained the qualification was not recognized, it was submitted that the petitioner had now obtained further qualification of MA in English from the Yashwantrao Chavan Maharashtra Open University which was duly recognized. Hence the objection that was noted by the Deputy Director of Education now did not exist. On these counts, it was submitted that the impugned order was liable to be set aside.

5. The learned Assistant Government Pleader for respondent No.1 supported the impugned order by relying upon the affidavit-in-reply. It was stated that the appointment was required to be made by applying the roster and since the backlog was not filled in, the approval was rightly denied. Similarly, the University from which the petitioner had obtained the educational qualification was not recognized and therefore refusal of approval on that count also was justified.

The learned Counsel for respondent Nos. 2 and 3 however supported the stand taken by the petitioner. He referred to the Pursis filed on behalf of the said respondents to submit that while seeking permission to fill in the vacant posts, it was clearly indicated that one post from the open category was also vacant. He relied upon the Pursis along with which document dated 26/8/2014 was filed. It is on this basis that the Deputy Director of Education had granted permission on 24/12/2014. The approval had been wrongly rejected.

6. We have heard the learned Counsel for the parties and we have perused the documents placed on record. It can be seen that in the application dated 26/8/2014 that was moved by the Management for seeking permission to undertake recruitment, it was indicated that one post from the Other Backward Class category and one post from the open category had become vacant as the earlier incumbents had retired. The permission as granted on 24/12/2014 indicates vacancies in four posts. The advertisement issued by the Management is also clear. One post was reserved for the Other Backward Class category and the other post was kept for the open category. The petitioner claims to be appointed from the open category. Though initially, approval to his appointment was refused on the ground of absence of workload, that ground has not been reiterated in the impugned order. The ground with regard to non-filling

of backlog has been reiterated. A fresh ground of the University from which the petitioner obtained education was not recognized has been added.

7. Insofar as the first ground with regard to existence of backlog is concerned, we find that this Court in *Namita Narayan Jha (supra)* has observed in para 11 as under :

*“11. It is apparent that even if backlog existed, availability of posts in open category is not in dispute. Thus, reserved category candidates were not denied consideration by filling of open category post. Both the petitioners before this Court have been selected after proper advertisement against open posts. The department was approached and after its due permission advertisement was published. Even if in this situation if backlog existed, as petitioners have not been appointed against backlog post or reserved posts, availability of backlog post cannot be the reason to deny approval. Authorities have not found the employer guilty of not taking steps to fill in either backlog or reserved posts.”*

Thus, even if there was a backlog, if an open post was advertised after permission, there was no reason to refuse approval on the ground of existence of backlog. The communication dated 24/12/2014 granting permission of recruitment also refers to existence of four vacant posts out of which only two were advertised. In view of the clear

stipulation in the advertisement, we do not find that there is any reason to refuse approval to the appointment of the petitioner only on the ground that there was a backlog in existence. Hence that ground in the impugned order dated 28/8/2017 would not survive.

8. Coming to the second ground on which approval has been refused, it is now brought on record that the petitioner has obtained equivalent degree in the subject of English from the Yashwantrao Chavan Maharashtra Open University. This development has occurred after passing of the impugned order. In these facts therefore we find that insofar as this deficiency is concerned, the matter can be re-examined by the Deputy Director of Education. The said exercise would enable the Deputy Director to consider the aspect of recognition of that University in the context of requirement of educational qualifications.

9. Accordingly, while holding that the first ground on which approval has been denied by the Deputy Director of Education on 28/8/2017 which is existence of backlog would no longer survive in view of what has been stated hereinabove, the proposal for approval is required to be examined in the light of the second deficiency as mentioned in the impugned order. The ground of existence of backlog shall not be re-opened when the proposal for approval is re-considered.

Accordingly, the following order is passed :

**ORDER**

i. The order dated 28/8/2017 is set aside. The Deputy Director of Education shall re-consider the proposal for granting approval to the appointment of the petitioner for the post of 'Junior College Teacher' by examining as to whether deficiency No.2 as mentioned in the impugned order is now satisfied in the light of the Government Resolution dated 1/12/2005 and the fact that the petitioner has obtained postgraduate degree in the subject of English (MA English) from the Yashwantrao Chavan Maharashtra Open University. The proposal be re-examined after giving due opportunity of hearing to the petitioner as well as respondent No.3 and a decision be taken within a period of four weeks. The petitioner would be entitled to salary for the period for which he had worked with the respondent Nos. 2 and 3. It is open for those respondents to seek reimbursement if the appointment of the petitioner is approved.

ii. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI – PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT

Digitally signed by SUMIT CHETAN  
AGRAWAL  
Signing Date: 01.08.2022 10:19