

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6539 OF 2019

Ku. Veena d/o Guruprasad Thakur,
Aged about 39 years,
Occupation-Service,
R/o. Tirora, Tahsil-Tirora,
District-Gondia. .. **Petitioner**

.. **Versus** ..

- 1] State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400 032.
- 2] Additional Commissioner,
Tribal Development, Adiwasi Vikas
Bhawan, Giripeth, Amravati Road,
Nagpur.
- 3] Bhagwati Shikshan Sanstha, Mendha,
Through its President,
R/o. Dr. Zakir Hussain Ward, Tirora,
Tahsil-Tirora, District-Gondia.
- 4] Ravindranath Tagore Primary and
Secondary Ashram School, Mendha,
Through its Head Master,
Tahsil-Tirora, District-Gondia.
- 5] Project Officer, Integrated Tribal
Development Project, Deori,
Tahsil-Deori, District-Gondia. .. **Respondents**

Shri I.N. Choudhari, Advocate for Petitioner,
Shri A.M. Kadukar, Assistant Government Pleader for Respondent
Nos.1, 2 and 5,
Shri R.M. Wasnik, Advocate for Respondent Nos.3 and 4.

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**Coram : Sandeep K. Shinde and
Mrs. Vrushali V. Joshi, JJ.**

Date : 15th December, 2022.

ORAL JUDGMENT (PER : Sandeep K. Shinde , J.)

Rule. Rule made returnable forthwith. Heard finally the learned counsel appearing for the parties.

2. Additional Commissioner, Tribal Development, Nagpur, vide order dated 04.07.2017 declined approval, to the appointment of the petitioner, on the post of Lady Superintendent, in Ravindranath Tagore Primary and Secondary Ashram School, Mendha (R-4), administered by the respondent no.2.

3. Facts essential for the decision of this petition are as under :

Petitioner is permanent resident of District-Gondia. Her educational qualification is M.A., M.S.W. She belongs to, Other Backward Class category. The Additional Commissioner, Tribal Development, vide communication dated 13.03.2014 addressed to

the Project Officer, Integrated Tribal Development Project, conveyed that in terms of Govt. Resolution dated 26.02.2014, posts of Lady Superintendent and Security Personnel, were admissible to staffing pattern and thus conveyed that the Managements of the Ashram School, be directed to fill in these two posts, within two months, by following the due procedure of law. Pursuant thereto, Respondent No.3-Bhagwati Shikshan Sanstha, Mendha, appointed petitioner, on the post of Lady Superintendent in Respondent No.4 School from 01.08.2014 till 30.7.2016. Whereafter, management forwarded a proposal to the officer of the Additional Commissioner through Project Officer, seeking approval to the appointment of the petitioner. The Additional Commissioner, vide impugned order, refused to accord approval, on two grounds; one, that, before appointing the petitioner, No Objection Certificate of office was not sought and; second, the particulars of other suitable candidates were not sought from the office of the Employment Exchange. Feeling aggrieved by that order, this petition is preferred.

4. Heard Shri I.N. Choudhari, learned counsel for the Petitioner, Shri A.M. Kadukar, learned Assistant Government Pleader for Respondent Nos.1, 2 and 5 and Shri R.M. Wasnik,

learned counsel for Respondent Nos.3 and 4.

5. Insofar as, first ground for rejection is concerned, it may be stated that the office of Additional Commissioner, vide communication dated 13.03.2014, addressed to the Project Officer itself, permitted the Ashram Schools to fill in the post of Lady Superintendent and Security Personnel. Pursuant to which, petitioner was appointed on 04.07.2017. Therefore, respondents' submission that the, Management R-3, ought to have taken No Objection, before appointing the petitioner on the post of Lady Superintendent was erroneous and, therefore, this reason for rejecting the approval, cannot be upheld.

6. Shri Choudhari, learned counsel for the petitioner, relying on the judgment of this Court in the case of **Vidarbha Youth Welfare Society and another .vs. State of Maharashtra and others, 2022 (4) Mh.L.J. 69**, would contend that the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act are *pari materia* to the provisions contained in the Ashram School Code, concerning the procedure to be followed for appointing the employees, in the Ashram Schools. Shri Choudhari, learned counsel, would rely on paragraph no.18 of

the cited decision, which reads as under :

18. The reading of Section 5 of the MEPS Act, does not indicate that the prior permission of the Education Officer is necessary to fill in a vacancy. What the proviso to Section 5(1) mandates is that in case of the Management intending to fill in a vacancy by appointment, before doing so, it shall ascertain from the Education Officer, whether there is any suitable person available on the list of surplus persons maintained by the Education Officer, for absorption in other schools and in case of such person being available, to appoint such person in such vacancy. The purpose behind this is obvious, to continue the employment of a person, who was already appointed by following the due process of law. This is an obligation, obviously upon the management and not upon the person who is appointed after due selection in a clear vacant post, and thus such appointee cannot be penalised due to the default on part of the Management in this regard, more so, when such appointee, has been permitted to continue in employment for years together. That apart there is nothing on record to indicate that there was any failure on part of the petitioner/Management in regard to the requirement of the proviso to Section 5(1) of the MEPS Act and that the Education Officer on this count had initiated any action against the petitioner/Management. Had there been any such a failure, the Education Department would not have permitted the continuation of the respondent no.3, in all the petitions for years together. Vasant Shikshan Prasarak Mandal (supra) relied upon by Shri Bhuibhar, learned Counsel for the petitioners, therefore on facts would not be attracted. Chandrashekhar Anandraoji Rewatkar (supra) has been set aside by the Hon'ble Apex Court in SLP No.842-843 of 2017 decided on 23/1/2017 and is of no assistance to Shri Bhuibhar, learned Counsel for the petitioners."

7. Insofar as the next ground for refusing the approval, is concerned, Shri Choudhari, learned counsel for the petitioner, would invite our attention to letter dated 27.05.2014 addressed by the Management to the Assistant Collector and Project Officer,

Integrated Tribal Development Project, seeking particulars of suitable candidates, for appointment on the post of Lady Superintendent. Indisputedly, this requisition of the Management had not been responded to. More so, it may also be stated, that the Management had issued an advertisement, dated 20.06.2014 and invited applications from the suitable candidates and, thereafter, candidates were interviewed by panel of interviewer of which a representative of the Project Officer was one of the panel members. This fact has not been denied by the respondents in their affidavit. Thus, in consideration of above facts, it is to be held that the respondent-Management had substantially complied with Rule 2.33 (B) of the Ashram School Code, before appointing the petitioner, as a Lady Superintendent, in respondent no.4-School.

8. In consideration of the facts above, we are in agreement with the decision of the learned Single Judge in the case of **Vidarbha Youth Welfare Society and another .vs. State of Maharashtra and others** (cited supra) and, even otherwise, the facts of the case do clearly convey and indicate that the Management had substantially complied with the provisions of Rule 2.33 (B) of the Ashram School Code, before appointing the petitioner, on the post of Lady Superintendent in Respondent No.4 School. Hence, for

the reasons stated above, we pass the following order :

ORDER

(i) Impugned order dated 04.07.2017 issued by Respondent No.2 -Additional Commissioner, Tribal Development, Adiwasi Vikas Bhawan, Giripeth, Amravati Road, Nagpur declining to approve petitioner's appointment as Lady Superintendent in respondent no.4 school, is hereby quashed and set aside.

(ii) In consequence, we direct Respondent No.2 - Additional Commissioner, Tribal Development, Adiwasi Vikas Bhawan, Giripeth, Amravati Road, Nagpur to accord approval to the appointment of the petitioner, on the post of Lady Superintendent in Respondent No.4 - School with effect from 01.08.2014.

(iii) Rule is made absolute in aforesaid terms.

(iv) Petition is disposed of.

(Mrs. Vrushali V. Joshi, J.)

(Sandeep K. Shinde , J.)

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