

WRIT PETITION NO.323/2020

- Versus -

State of Maharashtra and others ... Respondents

Ms.Kalyani Deshpande, Assistant Government Pleader for
Respondent Nos. 1 to 4.

DATE : 18 APRIL 2022

P.C. :

Heard the learned Counsel for the parties. Taken up for disposal.

2. The Petitioner No.1 is working as an Assistant Teacher in Petitioner No.3-School run by Petitioner No.2-Educational Institute. The Petitioners are aggrieved by the order passed by

Respondent No.1-State of Maharashtra through the Secretary Tribal Welfare Department (O.B.C., S.B.C., V.J.-N.T.) dated 14 November 2019, rejecting the Appeal filed by the Petitioners and consequently refusing to grant approval to Petitioner No.1's appointment as an Assistant Teacher.

3. The Petitioner Nos. 2 and 3 issued an advertisement for filling up the post of Shikshan Sewak on 04 June 2013 and selection process was undertaken. The Petitioner No.2-Educational Institute by an order dated 1 August 2013 appointed the Petitioner No.1 as Shikshan Sewak with effect from 5 August 2013. The sanction for the advertisement was given by the Deputy Director, Social Welfare Department, Amravati. Since the approval was not granted to the appointment and an Appeal was filed, Respondent No.1-Secretary considered the facts of Petitioner No.1's case and observed that when the post was filled up in the year 2013 it was governed by Government Resolution dated 16 October 2012, which mandated to appoint the excess teachers first and since there were excess teachers when the Petitioner No.1 was appointed, the Petitioner No.1's appointment was in breach of the conditions stipulated in Government Resolution dated 16 October 2012 and, therefore, the approval cannot be granted.

4. The learned Counsel for the Petitioners pointed out that on 21 February 2014, the Additional Commissioner, Social Welfare, Amravati, had written to the Regional Deputy Director, Social Welfare Department, Amravati, recommended the proposal of Petitioner No.1. Similarly, another communication was addressed on 6 August 2018, recommending the proposal of Petitioner No.1 for approval as an Assistant Teacher/Shikshan Sewak from 5 August 2013. The learned Counsel for the Petitioners has also drawn our attention to the communication issued by the Desk Officer to the Regional Deputy Commissioner on 16 August 2018.

5. The reply affidavits have been filed by the State Government. As on record, there are no excess teachers in Amravati District. As regards the information sought for by the Desk Officer, State of Maharashtra, by communication dated 16 August 2018 to ascertain the position of excess teachers when Petitioner No.1 was appointed, the same has gone unanswered till date. Even in the reply affidavit except stating that there were 53 excess teachers and only two belonging to the reserved categories, no further particulars have been given. The names of the excess teachers have not referred to at all. It is not explained as to why the query of the State Government was not responded.

6. The learned Counsel for the Petitioners has also relied upon the decision of the Division Bench of this Court in *Smt. Munoli Rajashri Karabasappa versus State of Maharashtra through Secretary and others* (in Writ Petition No.8587 of 2016 and connected matters) dated 10 July 2017. In the said decision, the Division Bench considered the Government Resolution dated 2 May 2012, which contains the identical stipulation and observed that when the recruitment is made to fulfill the backlog of reserved category. There is no dispute that Petitioner No.1's appointment was as a Scheduled Caste candidate.

7. The position is that no particulars as to excess teachers are being placed before us, that Petitioner No.1 was belonging to the Scheduled Caste and the recommendations in favour of Petitioner No.1 have not been considered in the impugned order, and on date, there are no excess teachers.

8. Considering this position, we are of the opinion that the impugned order will have to be quashed and set aside and the Respondents will have to be directed to consider the Petitioner No.1's proposal for grant of approval as per law without making a reference to the grounds stipulated in the impugned order.

9. Accordingly, the Writ Petition is disposed of by quashing and setting side the impugned order dated 14 November 2019. The Respondents to take a decision as regards the grant of approval to Petitioner No.1 within a period of eight weeks from the date the writ reaches to them, subject to earlier time bound and urgent commitments and communicate the outcome to the Petitioners.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)