

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2590 OF 2019

Smt. Shilabai w/o. Sugriv Lahane ... **PETITIONERS**

VERSUS

1. The State of Maharashtra
through its Secretary Education
Department Mantralaya,
Mumbai – 32
2. Education Officer (Secondary)
Zilla Parishad, Beed
3. Kamdhenu Shikshan Prasarak Mandal
Makegaon Tq. Renapur, Dist. Latur
through it's Secretary
4. Shri Sant Madhav Mama
Vidyalaya Nirpana,
Tq. Ambejogai, Dist. Beed.
through it's Headmaster

... **RESPONDENTS**

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Advocate for petitioner : Mr. V.S. Panpatte
Addl. G.P. for respondent Nos.1 and 2: Mrs. M.A. Deshpande
Advocate for respondent Nos.3 and 4 : Mr. S.B. Solanke

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AND

WRIT PETITION NO.4216 OF 2019

1. Ankush s/o Vishwambhar Jadhav
2. Madhav s/o Limbaji Phad

... **PETITIONERS**

VERSUS

1. The State of Maharashtra
through its Secretary
School Education Department
Mantralaya, Mumbai
2. The Deputy Director of Education
Aurangabad Division, Aurangabad
3. The Education Officer (Secondary)
Zilla Parishad, Beed
4. Kamdhenu Shikshan Prasarak
Mandal, Makegaon, Taluka
Renapur, Dist. Latur
5. The Headmaster,

Sant Madhav Mama Vidyalyaya,
Nirpana, Tq. Ambajogai, Dist. Beed.

... **RESPONDENTS**

...

Advocate for petitioners : Mr. S.R. Barlinge
Addl. G.P. for respondent Nos.1 to 3 : Mrs. M.A. Deshpande
Advocate for respondent Nos.4 and 5 : Mr. S.B. Solanke

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 24.07.2023
PRONOUNCED ON: 08.11.2023**

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule in both the petitions. It is made returnable forthwith. Learned AGP Mrs. M.A. Deshpande and learned advocate Mr. S.B. Solanke for the respondent – Management waive service. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. By way of these separate writ petitions the petitioners who were appointed on the same day pursuant to the advertisement dated 29.08.2009 published by the respondent – Management as Assistant Teachers are challenging the selfsame common order of the respondent No.3 – Education Officer (Secondary) refusing to grant approval to their appointments. Hence both the petitions are being disposed of by this common judgment.

3. The sum and substance regarding which there is no dispute on facts is to the effect that the respondent – Management published the advertisement on 29.08.2009 for filling up of 5 posts of Assistant

Teachers (Shikshan Sevak). Out of these 5 posts 3 were reserved for ST and SBC category candidates. Pursuant to such advertisement the Management undertook recruitment process and appointed the petitioners against 3 out of those 5 posts.

4. By the impugned order the Education Officer has refused to grant approval on the ground that petitioner Jadhav was an open category candidate, whereas, the other two petitioners Shri Phad and Smt. Lahane were from N.T.(D) category. It is observed that petitioners' appointments were not in accordance with advertisement and law.

5. Learned advocates for the petitioners would submit that admittedly, in the year 2009 when the petitioners were recruited, there was no approved roster. They were appointed by following due process as prescribed under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the Act) read with Rule 9 of the Maharashtra Employees Private Schools (Conditions of Service) Rules, 1981 (the Rule). The advertisement was published, interviews were held and the petitioners were appointed against the three posts of Assistant Teachers. In tune with the averments in the petition, according to them, no reserved category candidates were available and to meet the exigencies the petitioners were given appointments. There is no illegality. They have already put in three years as Assistant Teachers on a stipend of Rs.4000/- from 01.09.2009 to 31.08.2012 and the Education Officer ought to have approved their appointments.

6. The learned advocate for the respondent – Management in tune with the stand in its affidavits-in-reply would support the petitioners' cause. He submitted that the advertisement expressly mentioned that if the candidates from the respective reserved categories were not available the posts would be filled in from other reserved category candidates. Since no candidate from the ST and SBC were available the petitioners were given appointments. The petitioners possess the requisite educational qualification.

7. Per contra, the learned AGP would submit that the impugned order is unassailable. Admittedly, 3 out of the 5 posts of Assistant Teachers which were advertised were reserved for ST and SBC categories and once having so declared Management could not have appointed the petitioners.

8. We have considered the rival submissions and perused the papers. It is not the stand of the respondent - State and even the impugned order does not say that except the fact that the petitioners were not belonging to the reserved categories were given appointment there was any error or irregularity in issuing the appointments.

9. Admittedly, on the date of the advertisement the roster was not got approved and still the advertisement mentioned that out of 5 posts of Assistant Teachers, 3 were reserved for ST and SBC category. Consequently one will have to proceed on the premise that there was such a backlog of reserved category in the cadre of Assistant Teachers

with the respondent - Management. There is also no dispute about the stand of the Management and the petitioners that no candidate from those two categories was available.

10. If such is the state of affairs, when admittedly, at least two posts were left for open category, impugned order as well as the affidavit-in-reply is absolutely silent as to why at least two of these three petitioners could not have been considered to have been appointed against those two open category posts. True it is that one of the 5 posts that was to be filled pursuant to the advertisement was for the Assistant Teacher holding B.A., B.PEd qualification. None of the petitioners is holding B.PEd and was not eligible for being appointed against that one post. However, the advertisement is silent as to against which of these 5 vacancies including one of Physical Instructor the 3 seats were reserved, 2 for S.T. and one for S.B.C. So it would be a matter of merely considering the entitlement of the petitioners to seek approval to their appointments against 2 seats which were left for open category.

11. None of the sides have made it clear as to how this reservation can be worked out and how one post of Physical Instructor has been filled in. It was for the Education Officer to have inquired into and considered this aspect. Though it is a fact that out of 5 seats including 1 of Physical Instructor 3 were reserved for the specific categories to which the petitioners do not belong. He could have considered the issue regarding grant of approval to the petitioners'

appointments according to the posts which were available for open category. If someone has been appointed against the single post of Physical Instructor it would be imperative for the Education Officer to inquire into as to how that post was filled in and the Management would be under obligation to demonstrate it. Since there are 3 petitioners seeking approval against 5 seats of which 2 were available to be filled from open category, the Education Officer should have considered the issue from this angle and examined as to if approval could be granted to any of the petitioners against the two open category posts.

12. Since no other candidate is coming forward to claim the posts on which the petitioners were appointed, in our considered view it would be appropriate that the Education Officer considers a proposal afresh soliciting information from the Management as to how many of these 5 posts were filled and can reconsider grant of approval to the appointment of the petitioners against the posts that were available for the open category and on merit.

13. The impugned order does not reflect about the Education Officer having examined the aspect as to if approval could have been granted to the appointment of any of the petitioners against the posts which were available for the open category.

14. The petitioners have been heavily relying upon the decisions of the coordinate benches of this Court in the matter of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra through Secretary and**

Ors.; (Writ Petition No.8587/2016) and **Shivkant Venkatrao Losare Vs. The State of Maharashtra and Ors.;** (Writ Petition No.11787/2017). However, a careful look at these decisions would indicate that the orders therein refusing to grant approval passed by the Education Officers were on the count that the petitioners therein were appointed as Assistant Teachers in breach of the Government Resolution dated 02.05.2012, whereby, there was ban on the recruitment. *Ex facie*, the fact situation in the matter in hand is entirely different. The impugned order refusing to grant approval is not on the ground of any ban on the recruitment. Therefore, the petitioners are not entitled to derive any benefit from these decisions.

15. The writ petitions are partly allowed. The impugned order is quashed and set aside. The Education Officer shall undertake a fresh scrutiny and examine the aspect as to if appointment of any of the petitioners could be treated against the seats available for the open category by taking into consideration the appointment, if any, made against the post of Physical Instructor having B.A., B.PEd degree, and also after considering the merit of each of the petitioner and other candidates who had participated in the recruitment process.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE