

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8216 OF 2021

Kishor S/o Rambhau Balwante
Age : 32 years, Occup : Service as
Assistant Teacher,
R/o : at present Sadegaon,
Tq. and Dist. Parbhani

.. Petitioner

Versus

- 1] The State of Maharashtra
Through its Principal Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 32
- 2] The Principal Secretary,
Other Backward Bahujan Welfare
Department, Govt. of Maharashtra,
Mantralaya, Mumbai – 32
- 3] The Regional Deputy Commissioner,
Social Welfare Department,
Dr. Babasaheb Ambedkar Social
Justice Bhavan, Khokadpura,
Aurangabad
- 4] The Assistant Commissioner,
Social Welfare, Jaikwadi, Vasahat,
Parbhani, Dist. : Parbhani
- 5] Ahilyadevi Mahila Va Balak Vikas Mandal,
Parva, Registered Office :
“Govind Niwas”, Kalyan Nagar,
Parbhani – 431 401,
Through its Secretary
- 6] Sant Gadgebaba Secondary Ashram School,
Sadegaon, Tq. And Dist. : Parbhani
Through its Head Master

.. Respondents

Mr. V.S. Panpatte, Advocate for petitioner
AGP for the respondent – State : Mr. S.B. Pulkundwar
Advocate for the respondents no. 5 and 6 : Mr. R.I. Wakade

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**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

DATE : 8 JUNE 2023

ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate Mr. Panpatte for the petitioner and learned advocate Mr. Wakade for the respondents no. 5 and 6 finally at the stage of admission.

2. The petitioner who was appointed as Assistant Teacher by the respondent no. 5 – management of the respondent no. 6 – Ashram school by the order dated 01-08-2017, is aggrieved by the decision by the respondent no. 3 - Regional Deputy Commissioner of Social Welfare Department, Aurangabad dated 29-08-2019 refusing to grant approval to his appointment on the ground that the appointment was made without absorption of surplus teachers. Even his appeal to the State government has been dismissed by the communication dated 12-01-2021 on the same ground and by referring to the Government resolution dated 16-10-2012.

3. We have carefully gone through the petition, the affidavit in reply filed by the respondents no. 2 to 4 and the rival submissions.

4. At the outset, it is necessary to note that though the respondents no. 2 to 4 have filed affidavit in reply, it is an evasive one

and does not in express terms dispute the fact that the petitioner who claims to have been appointed against the post reserved for scheduled tribe category. Even the affidavit in reply is absolutely silent about the communication addressed to the Commissioner of Social Welfare, Pune dated 15-06-2017 by the respondent no. 5 – management seeking permission for making appointment if no surplus teacher was available. Even a similar communication was addressed to the respondent no. 3 as well as the respondent no. 1. In the absence of such demur, one will have to proceed on the premise that the petitioner has been appointed against a post reserved for backward class.

5. If such is the state-of-affairs, the issue is fully covered by several decisions of this Court starting from i) ***Ashok Nilkanth Dhale Vs. State of Maharashtra and Others; 2016 (5) Mh.L.J. 742***, ii) ***Sou. Revati Kusha Wagh and another Vs. The State of Maharashtra and another*** (writ petition no. 10580 of 2015 with connected writ petitions – Principal Seat) decided on 9 March 2017 and followed by the decision in the matter of iii) ***Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra Through Secretary and others*** (writ petition no. 8587 of 2016 with connected writ petitions - Principal Seat) decided on 10 July 2017.

6. Suffice for the purpose to observe that this Court has taken a consistent view that a similar Government resolution dated 2 May

2012 as is the Government resolution dated 16 October 2012 will not be applicable to three categories of cases (a) where the recruitment process is already commenced prior to the GR dated 2 May 2012; (b) where the appointments made for filling up vacancies in English, Mathematics and Science; and (c) where the recruitment is made to fulfill the backlog of reserve categories candidates.

7. As is observed above, the specific averment that the petitioner was appointed against the reserved category post has not been expressly controverted. There is also no dispute raised in respect of the communication addressed to the respondent no. 3 dated 15 June 2017. In addition, even the affidavit in reply is absolutely silent as to the availability of any surplus teacher for being appointed when the petitioner was appointed. In view of such state-of-affairs, in our considered view, the petitioner's case would be squarely covered by the afore-mentioned decisions of this Court.

8. Writ petition is allowed.

9. The impugned orders dated 29-08-2019 and 12-01-2021 passed by the respondent no. 3 and respondent no. 2, respectively, are quashed and set aside.

10. The matter is relegated to the respondents for consideration of the afore-mentioned aspects and for taking a fresh

decision for grant of approval to the petitioner on its own merits but without resorting to the grounds on which the impugned orders were passed. The decision shall be taken as expeditiously as possible and in any event within six weeks.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/