

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2423 OF 2019

Ms. Bhagyashri Vishnu Jadhav & Anr.

..Petitioners

Versus

The State of Maharashtra Through
The Secretary, School Education Department
& Anr.

..Respondents

Mr. Vinayak R. Kumbhar i/b. Ashwini N. Bandiwadekar for
Petitioners.

Mr. A. P. Vanarse, A.G.P. for Respondent Nos.1 and 2.

CORAM : SARANG V. KOTWAL, J.

DATE : 13 MARCH 2023

PC :

1. Heard the parties. The petition is decided finally with consent of both learned counsel.

2. The Petitioner No.1 was appointed as a Shikshan Sevak in the aided secondary school of the petitioner No.2. The present petition challenges the impugned order dated 16/01/2019 passed by the respondent No.2 i.e. the Education Officer (Secondary), Zilla Parishad, Sangli refusing approval to the appointment of the petitioner No.1 as 'Shikshan Sevak' in the aided Secondary School

of the petitioner No.2. Further directions are sought that the respondent No.2 be directed to grant approval to the petitioner No.1 as 'Shikshan Sevak' for three years w.e.f. 01/07/2023.

3. Heard Shri. Vinayak Kumbhar, learned counsel for the petitioner and Shri. Vanarse, learned A.G.P for the Respondents.

4. A few dates are relevant for the decision of this petition. One Sindhutai Patil who was working on the same post was due to retire on 30/06/2013. On 03/06/2013, the petitioner No.2 made an application before the Respondent No.2 for permission to publish an advertisement for that post. There was absolutely no response from the respondent No.2. Therefore, an advertisement was published on 21/06/2013. The interviews were held on 26/06/2013. The petitioner No.1 was selected and an appointment letter was issued on 30/06/2013 to take effect from 01/07/2013. The petitioner No.1 joined the service on 01/07/2013. It is the case of the petitioners that they sent an application for approval of such appointment. The proposal for approval was accepted by the respondent No.2 on 05/10/2018. The respondent No.2 pointed

out certain irregularities. They were cured on 20/10/2018. However, the respondent No.2 did not grant an approval and vide impugned order dated 16/01/2019 refused to grant approval. The refusal was based on six grounds, as follows:

- i) The permission was not taken to publish an advertisement.
- ii) There were specific directions from the Government not to make new appointments unless the list of surplus teachers was exhausted.
- iii) The G.R. dated 24/08/2018 was not adhered to.
- iv) Without verifying whether surplus teacher was available, this appointment was made.
- v) The G.R. dated 23/06/2017 provided that the appointments were to be made through "Pavitra Portal".
- vi) The extract of roster for three years was not submitted with the proposal.

5. Learned counsel for the petitioners invited my attention to the application dated 03/06/2013, wherein a specific prayer was made for permission to publish an advertisement for filling up the post which was to fall vacant because of retirement of Ms. Sindhutai Patil. It was received by the office of the respondent

No.2 on the same date i.e. on 03/06/2013; however, there was absolutely no response.

6. Learned counsel for the petitioners relied on the ratio laid down by a Single Judge of this Court vide order dated 16/07/2018 in Writ Petition No.13485 of 2016; wherein in a similar circumstance it was held that, since there was no response from the Education Officer, there was nothing wrong in publishing the advertisement and ultimately an order of the Education Officer refusing approval was set aside. He was directed to grant approval to the petitioner's appointment (in that petition).

7. Learned counsel for the Respondent Nos.1 and 2 invited my attention to the affidavit in reply filed on behalf of the Respondent No.2. In that affidavit in reply, a reference was made to the Rules and the provisions under the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (for short 'M.E.P.S. Act'). He submitted that the impugned order does not suffer from any illegality and, therefore, the relief cannot be granted.

8. I have considered these submissions. In the entire affidavit in reply there is no reply to the contentions of the petitioners that the respondent No.2 had not responded to the application dated 03/06/2013. Therefore, the petitioners' case in that behalf has remained unchallenged. The observations made in the order passed by this Court in W. P. No.13485 of 2016 is squarely applicable to the facts of this case.

9. In the said order dated 16/07/2018 passed in W.P.No.13485 of 2016, a Single Judge of this Court had observed that, the School Management's letter seeking permission for filling vacant post was not responded by the Education Officer and subsequently the Education Officer had declined to accord the approval. It was observed that, there were number of Judgments of this Court making it clear that the ban on recruitment of teachers pending absorption of surplus teachers under Government Resolution dated 02/05/2012 could not be invoked by the State, when despite communication of a vacancy of a teacher's post by the school management to the Education Officer and seeking of his permission for filling the post, the Education officer does not reply

or forward any name of a surplus teacher to be appointed in the vacancy and as a result, the school management proceeds to select and appoint a teacher in the vacant post. It was further observed that the School Management is not expected to carry on with the vacancy awaiting indefinitely the Education Officer's response. Having observed thus, learned Single Judge of this Court had directed the Education Officer to grant approval to the petitioner's appointment (in that petition).

10. The ratio of that order is squarely applicable to the facts of this case. The appointment of the petitioner was made in 2013. The Government Resolution in the year 2017 and 2018 did not have effect on the appointment made earlier. The petitioner has made out a case for grant of relief in this petition.

11. Hence, the following order:

ORDER

- i) The impugned order dated 16/01/2019 issued by the Respondent No.2 refusing approval to the appointment of the Petitioner No.1 as Shikshan

Sevak in the aided Secondary School of the petitioner No.2 is set aside.

- ii) The Respondent No.2 is directed to grant approval to the appointment of the petitioner No.1 as Shikshan Sevak for three years w.e.f. 01/07/2013 and thereafter shall consider the proposal submitted by the Management for appointment of the Petitioner No.1 as Assistant Teacher, in accordance with law.
- iii) The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)