



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8000 OF 2022

AMOL SHIRISHKUMAR MESTRI,
Aged 34 years, Occ: Service,
R/o. 1544, Agargaon,
Post & Taluka Lanja,
District Ratnagiri- 416 701

...PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai- 400 032.
- 2. THE EDUCATION OFFICER,**
[Secondary], Zilla Parishad,
Ratnagiri.
- 3. NEW EDUCATION SOCIETY,**
Lanja, Taluka Lanja,
District Ratnagiri 416 701,
Through its Chairman /
Secretary
- 4. NEW ENGLISH SCHOOL & T.P.,**
Shetye Junior College,
A/P/T Lanja, District Ratnagiri,
Through its Head Master

...RESPONDENTS

WITH
WRIT PETITION NO.7716 OF 2022

JYOTI BHIMSEN ACHAREKAR,
Aged 45 years, Occ: Service,
R/o. A/P/T Lanja,
District Ratnagiri- 416 701

...PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai- 400 032.
- 2. THE EDUCATION OFFICER,**
[Secondary], Zilla Parishad,
Ratnagiri.
- 3. NEW EDUCATION SOCIETY,**
Lanja, Taluka Lanja,
District Ratnagiri 416 701,
Through its Chairman /
Secretary
- 4. NEW ENGLISH SCHOOL & T.P.,**
Shetye Junior College,
A/P/T Lanja, District Ratnagiri,
Through its Head Master

...RESPONDENTS

WITH
WRIT PETITION NO.8117 OF 2022

MAHADEV SHIVAJI PATIL,
Aged 46 years, Occ: Service,
R/o. A/P/T Lanja,
District Ratnagiri- 416 701

...PETITIONER

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai- 400 032.
2. **THE EDUCATION OFFICER,**
[Secondary], Zilla Parishad,
Ratnagiri.
3. **NEW EDUCATION SOCIETY,**
Lanja, Taluka Lanja,
District Ratnagiri 416 701,
Through its Chairman /
Secretary
4. **NEW ENGLISH SCHOOL & T.P.,**
Shetye Junior College,
A/P/T Lanja, District Ratnagiri,
Through its Head Master

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS	Mr Narendra Bandiwadekar, Senior Advocate, with <i>Vinayak Kumbhar, i/b Ashwini</i> <i>Bandiwadekar in all Petitions.</i>
FOR RESPONDENTS- STATE.	Ms PN Diwan, AGP, in WP <i>8000/2022.</i>
FOR RESPONDENTS- STATE	Ms Ashwini A Purav, AGP, in WP <i>7716/2022.</i>
FOR RESPONDENTS- STATE	Ms PJ Gavhane, AGP, in WP <i>8117/2022.</i>

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

RESERVED ON : 11th July 2023

PRONOUNCED ON : 11th August 2023

JUDGMENT (Per Neela Gokhale J):-

1. Rule, returnable forthwith. The Respondent State has filed its Reply affidavit. The petition is heard finally by consent of parties.
2. There is a common order impugned in the three petitions and the issue involved is also identical. Hence the three petitions are being disposed by this common judgment and order.
3. The Petitioners in the three petitions are Assistant teachers engaged in the 4th Respondent junior college run by the 3rd Respondent educational society. The contesting 2nd Respondent is the education officer of the concerned Zilla Parishad of the 1st Respondent, the State of Maharashtra.
4. This is a second round of litigation. By order dated 4th March 2021, a learned Single Judge of this Court upon consideration of the reasons of the 3rd Respondent in refusing to grant approval to the appointment of the Petitioners as Assistant teachers in the college observed that the order of rejection by the department suffered from a complete non application of mind and the issue of approval needed reconsideration. Hence this Court directed the Education officer to consider a detailed explanation by the Petitioners and the

Management along with their response to the grounds of rejection in that impugned order of 15th June 2019. The Petitioners and the management submitted their responses to each of the objection raised by the Department. Nevertheless, the Department maintained its refusal by order of 10th March 2022 for the same reasons. It is this order which is impugned in the present proceedings.

5. There were nine sanctioned posts of Assistant teachers in the school on un-aided basis in academic year 2014–2015. The Management issued advertisements in the local daily newspaper and pursuant to a selection procedure appointed the Petitioners as Assistant teachers on probation. They completed the requisite probation period and management sought approval from the department for their posts. Prior to their appointment, the management also sought nomination of qualified surplus candidates from the government, however none were nominated. The Petitioners gave their joining letter and commenced duties.

6. At first, the Education Officer even refused to accept the proposal on the ground that there was a ban on recruitment and hence the appointment was illegal. However, upon being pointed out that the approval was sought for unaided posts, the proposal was reluctantly accepted on 24th October 2019. Almost immediately, deficiencies were marked. The management submitted their explanations to the objections and the matter was kept pending. In the meantime, however, the department insisted that the management advertise the same posts through its Pavitra Portal

failing which the vacancies faced the risk of being cancelled/lapsed. After protracted requests and denials the petitioners filed the first writ petition no 10496 of 2019 assailing the order of the first refusal dated 15th June 2019. It was in this writ petition that this court gave directions to reconsider the proposal, having found the objections to be merit less.

7. Now the Petitioners are faced with the same objections after reconsideration by the department leading to the impugned order of 10th March 2022. The crux of the objections of the department are that the management failed to advertise the vacancies on the Pavitra Portal created by the department and the management uploaded four requirement for four unaided and six aided posts on the portal, before requesting cancellation of the advertisement of four unaided posts. Secondly, in the academic year 2014–2015 there was a backlog of posts in the reservation category and the Petitioners despite being from OBC category were appointed on posts of open category. Thirdly, the management failed to follow the rule of issuing advertisements in two local newspapers and also failed to seek permission of Education Officer prior to giving advertisement in one newspaper.

8. Mr. Bandiwadekar, learned senior counsel appearing for the Petitioners, meets the objections of the department. He challenges the objection relating to lack of vacancies by pointing out total non-application of mind of the department. He substantiates his submission by drawing our attention to the order of 7th April 2016 which clarifies that there was no excess appointment made of a

teacher on the unaided post for Std 9 and 10 while the excess appointment was for Std. 6 to 8, which was totally unrelated to the Petitioners. The appointment of the Petitioners was for Std 9 and 10 and not for classes of either Std. 6 to 8 or for Std. 5.

9. In reference to the objection of existence of backlog of reservations and the appointment of the Petitioners on posts in the open category, the learned counsel refers to a series of decision of this court having already settled the legal issue that despite a back log of reservation, if there is also a deficit in the Open Category, it is open to the management to appoint a candidate in the Open category.

10. As regards the last objection regarding absence of advertisement in two newspapers and prior permission of the Education Officer, it is stated that the Education Department itself, in an earlier order of 21st February 2018, had conveyed prior NOC was not required for appointments made before 20th June 2014. Mr. Bandiwadekar hence urges us to allow the petition.

11. Learned AGPs appearing for the Respondent Department justify the refusal by once again reiterating the objections in the impugned order. Additionally, they say that the Petitioners have also approached the School Tribunal and their appeals are pending before the Tribunal.

12. Upon consideration of the facts in the case, especially looking at the objections taken by the Education Department to refuse

approval and the explanation of the teachers and management, we are unable to understand the reasons of the dogged resistance of the Education Officer to grant approval. Admittedly, the teachers are working in the school for the last nine years and have an unblemished service record. The earlier order of this court also observed non-application of mind in refusing approval on the same grounds and in fact gave an opportunity to the Department to re-work or self-correct its error and pass appropriate orders. Mr. Bandiwadekar has relied upon the following decisions of this court.

- i. *The Deputy Director of Education vs The President, Sudhagad Education Society*, LPA No. 63 of 2010 Decided by J.N.Patel J and S.C. Daharmadhikari J (as they then were), decided on 5th May 2010
- ii. *Smt Manish Rajeshwar Deshmukh vs State of Maharashtra*, -Writ Petition No. 7956 of 2011 by R.V.More J (as he then was), dated 3rd October 2011.
- iii. *Ms Madhuri Haribhau Vishe & Anr vs State of Maharashtra & Anr*, Writ Petition No. 6775 of 2021 by Sunil Shukre vs G.A. Sanap JJ decided on 21st March 2021.

13. The decisions placed on record by Mr. Bandiwadekar clearly settle the issue regarding appointing persons to a post in an open category despite belonging to another category, subject to availability of posts in open category. Yet, the objection is taken. To what avail is unexplained.

14. Then there is the oft repeated objection of absence of permission prior to issuing advertisement. But by its own order of 21st February 2018 at Exhibit S, the Department has clarified its that this was not a requirement in cases where appointments were made prior to 20th June 2014. Admittedly, the Petitioners were appointed on 16th June 2014 hence prior permission condition is rendered unessential. Hence this objection is also futile.

15. The impugned order is lengthy. At first glance, it seems substantive. A closer look however reveals only a change in wording of the three objections, which are already dealt with.

16. The Ld. AGP has additionally pointed to a pending proceeding before the School Tribunal, Kolhapur Division bearing No. 21 of 2022. A copy of the same is neither shown to us nor placed on record. Beyond the submission there is nothing to ascertain the nature of proceedings before the Tribunal.

17. Another aspect rendering the impugned order as untenable is the approval granted to four other teachers at the same college in similar circumstances by the letter of 21st February 2018 issued by the Additional Secretary of the Respondent. This letter declares that prior permission of the Education officer to issue advertisement is **not** a *sine qua non* for appointments made prior to 20th June 2014. This exemption cannot be applied selectively. The objection on that ground for refusing approval to the Petitioners is thus discriminatory and hence arbitrary.

18. In view of the foregoing, we have no hesitation in holding that the impugned order of 10th March 2022 is untenable. The Respondent Education officer is directed to grant approval to the services of the three Petitioners within a period of 4 weeks from the date of this order.

19. *Rule is made absolute in terms of prayer clause (b), set out below:*

“(b) By a suitable writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned order dated 10.03.2022 issued by the Respondent No. 2, and accordingly the Respondent No. 2 may be directed to grant approval to the appointment of the Petitioner as Assistant Teacher on un-aided post in the Respondent No. 4 School w.e.f. 16.6.2014.”

20. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)

Note: This order is modified by an order dated 29th September 2023 passed on a praecipe. Corrections are shown in bold and italics.