

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

WRIT PETITION NO.12389 OF 2016

1. Shikshan Prasarak Mandal, Naneli-Dhepgalu, Having officer at, Naneli-Dhepgalu, Tal. Kudal, District: Sindhudurg Through its President/Secretary
2. Khajagi Prathmik Shala, Naneli-Dhepgalu, Tal. Kudal, Dist: Sindhudurg. Through its Headmaster.
3. Shri. Vishal Pandharinath Dhuri, Age:Adult, Occupation :Service, R/o Naneli-Dhepgalu, Tal. Kudal, Dist: Sindhudurg

... Petitioners

V/s.

1. The State of Maharashtra, Through the Secretary, School Education Department, Mantralaya, Mumbai-400 032.
2. The Commissioner of Education School Education Department, Maharashtra State, Pune.
3. The Director of Education, (Primary and Higher Primary), Maharashtra State, Pune-1.
4. The Deputy Director of Education, Kohapur Region, Kolhapur.
5. The Education Officer (Primary), Zilla Parishad, Sindhudurg,

Having Office at, Zilla Parishad Building,
Sindhudurg Nagari-Oros, Dist: Sindhudurg

... Respondents

Mr. Prashant Bhavake for the Petitioner.
Mr.S. S. Kalel, AGP for Respondent Nos. 1 to 4.
Mr. Ramesh D. Rane for Respondent Nos. 5.

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**CORAM : A. S. CHANDURKAR &
FIRDOSH P POONIWALLA, JJ.**
DATE : 5th DECEMBER 2023

Oral Judgment (Per A. S. Chandurkar J.):

1. Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties.
2. A challenge raised in the present Writ Petition is to the communication dated 04.07.2016 issued by the Education Officer (Primary) Zilla Parishad, Sindhudurg refusing to approve the appointment of the Petitioner No.3 as Shikshan Sevak.
3. The facts relevant for considering the challenge to the impugned communication are that on 18.12.2012 the Petitioner Nos.1 and 2 sought permission of the Education Officer for filling one post of Assistant Teacher that was lying vacant. Prior to seeking such permission, an advertisement came to be issued on 20.12.2012. The Petitioner No. 3 came to be appointed

as Shikshan Sevak by the order dated 15.01.2013. The proposal seeking approval to his appointment has been rejected by the impugned communication dated 04.07.2016 by referring to the Government Resolution dated 02.05.2012. By the said Government Resolution, a reference has been made to the requirement of absorption of surplus teachers prior to permitting recruitment to be undertaken.

4. This Court on 14.01.2021 had directed the learned Counsel appearing for the Education Officer (Primary) to place on record an affidavit indicating as to whether there were any surplus teachers who were to be absorbed in the year 2012-13. Pursuant to this order, such affidavit has been filed by the Deputy Education Officer(Primary), Zilla Prishad, Sindhudurg. Along with the said affidavit, a communication dated 21.01.2021 issued by the Deputy Director of Education, Kolhapur Division is placed on record wherein it is stated that for the academic year 2012-13, there were no surplus teachers who were yet to be absorbed. Similarly, the Petitioners have also filed an additional affidavit indicating the position as prevailing within the jurisdiction of the Education Officer (Primary), Zilla Parishad, Sindhudurg in which it is stated that there were no surplus teachers in about 21 Schools.

5. In the light of aforesaid factual position, the learned Counsel for the Petitioners submits that since there were no surplus teachers who were remaining to be absorbed, the Petitioner No.3's appointment ought to have been approved. On the other hand the learned Counsel for Respondent No.5 submits that since the appointment of Petitioner No.3 has been made without obtaining permission of the Education Officer (Primary), the impugned order does not call for interference. He further submits that Clause 1.8 of the G. R. dated 2.05.2012 continues to operate and it has not been set aside pursuant to the judgment delivered in Writ Petition No. 4168 of 2012 in the matter of ***Mahila Vikas Mandal, Aurangabad & Ors. Vs. The State of Maharashtra & Ors.***

6. We have heard the learned Counsel for the parties and we have perused the documents on record. We find that the Government Resolution dated 2.5.2012 seeks to ensure that without absorbing surplus teachers, fresh recruitment should not be undertaken. It is with that object in mind that the Education Officer (Primary) was directed to place on record the details with regards to the availability of any surplus teachers within such jurisdiction. The affidavit on record indicates that no surplus teachers remained to be absorbed in the year 2012-13.

7. In that view of the matter we find that the purpose of issuing

Government Resolution dated 02.05.2012 stands satisfied.

8. However, it is seen in the present case that the Petitioner No.3 has been recruited without seeking prior permission of the Authorities. It was necessary for the Petitioner Nos.1 and 2 to have waited for some reasonable time prior to issuing the advertisement. The said Petitioners moved application dated 19.12.2012 seeking permission to fill in the post. The Advertisement in question has been issued immediately on the next day which is 20th December 2012. This aspect cannot be ignored in the case in hand. Considering these facts, in our view, the following order would serve the ends of justice:-

i. In the light of the affidavits filed by the Education Officer (Primary) as well as the Deputy Director of Education, it is found that in the academic year 2012-13 there were no surplus teachers that remained to be absorbed. Hence, the reason indicated in the impugned communication dated 04.07.2016 does not survive. The provisions of Government Resolution dated 02.05.2012 have not been breached.

ii. Subject to the Petitioner Nos. 1 and 2 paying cost of Rs.

25,000/- to Zilla Parishad, Sindhudurg, within a period of four weeks from today, the Education Officer (Primary) shall re-consider the proposal dated 25.05.2016 seeking approval to the appointment of Petitioner No.3. The approval shall not be rejected by relying upon Government Resolution dated 02.05.2012. Decision on the proposal be taken within a period of four weeks of receiving the same. The decision taken be communicated to Petitioners. If the appointment of Petitioner No.3 is approved, all consequential benefits shall be made available.

9. Rule is disposed of in aforesaid terms with no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(A. S. CHANDURKAR, J.)