



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1648/2022

1. Arun Thute Lokvikas Pratishtan,
Hinganghat, Dist. Wardha,
through its President, Smt. Ushakiran
Aurnrao Thute, aged 66 Yrs.,
Occ. Retired, R/o Hinganghat,
Tq. Hinganghat, Dist. Wardha.
2. Shobhatai Zoting Arts & Commerce
Junior College, Hinganghat,
Dist. Wardha, through its Principal.
3. Dattatraya S/o Sopanrao Ubhad,
aged 45 Yrs., Occ. Service as Peon
in petitioner No.2 college,
R/o Hinganghat, Tq. Hinganghat,
Dist. Wardha.

... Petitioner

- Versus -

1. State of Maharashtra,
through Secretary to Ministry of
Higher Education Department,
Mantralaya, Mumbai - 32.
2. Director of Education,
Maharashtra State, 17, Dr. Babasaheb
Ambedkar Road, Camp, Pune 411 001.
3. Deputy Director of Education,
Nagpur Region, Nagpur,
Old Morris College Building,
Nagpur.

... Respondents

Mr. R.L. Khapre, Senior Counsel with Mr. Vijaykumar Paliwal,
counsel for the Petitioners.

Mr. M.K. Pathan, Additional Government Pleader for
respondents 1 to 3.

CORAM: ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10.3.2023

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The challenge is to the order dated 15-2-2020 rendered by respondent 3-Deputy Director of Education, Nagpur Region, Nagpur whereby the approval to the appointment of petitioner 3 is rejected. Petitioner 1-institution manages petitioner 2-school. Petitioners 1 and 2 sought permission to fill in the post of Peon which was granted by the Deputy Director of Education vide communication dated 20-5-2010 (Annexure-1).

3. Petitioners 1 and 2 published advertisement in daily newspaper “Sakal” of 27-6-2010, candidates were interviewed, and petitioner 3 was selected as Peon vide Resolution dated 11-7-2010 of the Managing Committee, and the appointment order was issued on 13-7-2010.

4. Petitioner 3 joined duty on 15-7-2010. Proposal seeking approval to the appointment of petitioner 3 was submitted to the Deputy Director of Education. The proposal was kept pending and is ultimately rejected. The petitioners approached the High Court in Writ Petition 6924/2019 which was disposed of vide order dated 03-3-2021 noting the statement that the Deputy Director of Education has considered and rejected the proposal.

5. The rejection of the proposal is on the ground that the appointment of petitioner 3 is made during the period the ban on recruitment to Class-C and Class-D posts, was in force. The order impugned refers to the Government Resolution dated

05-6- 2010 which imposed the ban for one year and then refers to the Government Resolution dated 16-7-2011 which extended the ban for further one year. The order impugned notes that since the advertisement dated 27-6-2010 is issued after 05-6-2010, the appointment of petitioner 3 cannot be approved.

6. The submission of the learned Senior Counsel Mr. R.L. Khapre is that the appointment of petitioner 3 was made after following due procedure. Permission was obtained, advertisement was issued and petitioner 3 was selected. It is emphasized that the appointment was in clear and permanent vacancy and that petitioner 3 belongs to the Other Backward Category.

7. It is submitted that the recruitment process have already commenced before the issuance of Government Resolution dated 05-6-2010 inasmuch as the permission to fill in the post was sought by the management vide application dated 08-3-2010, and was granted prior to the issuance of the Government Resolution

dated 05-6-2010. Another important aspect which is highlighted that the Government by issuing Government Resolution dated 06-2-2012 directed that the ban on recruitment shall not apply for clearing the backlog.

8. The stand of respondent 3-Deputy Director of Education is that although the permission was accorded by the then Deputy Director of Education prior to the Government Resolution dated 05-6-2010, and the permission was not cancelled or revoked, it was the responsibility of petitioner 1-institution to stop the process of recruitment. It is further submitted that the then Deputy Director granted permission without verifying whether there is any surplus employee available or not. In so far as the latter submission is concerned, we do not delve deeper inasmuch as the rejection of the approval of petitioner 3 as Peon is only on the ground that the appointment is made during the period the ban was in force. In so far as lifting of the ban in certain situations contemplated by Government Resolution dated 06-2-2012, the

stand of respondent 3 is that since the appointment of petitioner 3 is made in the year 2010, the Government Resolution dated 06-2-2012 has no applicability.

9. We have considered the submissions of the learned Senior Counsel Mr. R.L. Khapre and the learned Assistant Government Pleader Mr. M.K. Pathan, which are on the lines of the submissions in the memo of petition and the affidavit-in-response.

10. Mr. R.L. Khapre has invited our attention to the decision dated 10-7-2017 of the Coordinate Bench in Writ Petition 8587/2016 and connected petitions. Mr. R.L. Khapre would submit that the Coordinate Bench has carved out three categories in which the ban on recruitment would not apply and one category is where the recruitment is made to fulfil the backlog. Mr. R.L. Khapre would then invite our attention to the decision of the Hon'ble Apex Court in *Government of Andhra Pradesh*

and others v. Sri Sevadas Vidyamandir High School and others, (2011) 9 SCC 6193 to buttress the submission that the ban on recruitment shall not apply where the recruitment process is already initiated by the management.

11. The factual matrix considered in the said decision is that the private aided school was granted permission to fill in the post vide order dated 22-9-2004 pursuant to which the management initiated the recruitment process. The Government issued memo dated 20-10-2004 imposing ban on recruitment and the selection process could not be completed. The management approached the High Court contending that since the recruitment process had commenced, the ban imposed vide memo dated 20-10-2004 shall not apply. The contention of the management was upheld by the learned Single Judge and the appeals preferred by the Government of Andhra Pradesh were dismissed by the Division Bench. The Hon'ble Apex Court observed that there is no dispute that the memo dated 20-10-2004 imposing ban on

recruitment to grant in posts was issued after according permission to fill up the vacant posts and there is further no dispute that the memo imposing the ban was not given retrospective effect so as to negate the approval already given for filling the grant-in-aid posts. The Hon'ble Apex Court accordingly dismissed the appeal preferred by the Government of Andhra Pradesh.

12. We are not in a position to appreciate the stand of the Deputy Director of Education that even if the permission to fill in the post is not revoked by the authority, petitioner 1 was obligated to stop the recruitment process. In the facts of the present case, we are more than satisfied that the refusal of the approval to the appointment of petitioner 3 is clearly arbitrary. It appears that petitioner 3 is appointed in clear and permanent vacancy pursuant to the permission which was given prior to the imposition of ban and had already put in more than nine years of service when the approval came to be rejected. Nothing prevented

the authority from cancelling or revoking the permission to fill in the post. In view of the ban imposed, inasmuch as the permission to fill in the post is admittedly given prior to the imposition of the ban, the submission of Mr. R.L. Khapre that petitioners 1 and 2 were nurturing the impression that the ban shall not apply, is a reasonable view in the facts of the case.

13. We, therefore, allow the petition in terms of prayer clauses

(i), (ii) and (iii), which read thus :

“i) quash and set aside the impugned order dated 15.02.2020 at Annexure-14 passed by the respondent No.3 learned deputy Director of Education, Nagpur Region, Nagpur by which rejecting the approvals in favour of the Petitioner No.3, in the interest of justice and further be pleased to;

ii) direct the Respondent no.3 to granting approval to the appointment of the Petitioner No.3 in terms of appointment orders dated 13.07.2010 at Annexure-7(a) to the post of peon in Petitioner no.2 College, in the interest of justice and further be pleased to;

iii) direct Respondents to release salary of the Petitioner No.3 from the date of joining (sic joint) i.e. 15.07.2010 as per appointment dated 13.07.2010 in the interest of justice.”

7. Rule is made absolute in the afore-stated terms. There shall be no orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

Tambaskar.