



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

WRIT PETITION NO. 7574/2022

- PETITIONERS:**
- 1] Saibaba Gramin Shikshan Sanstha,
Gadchiroli, Near Gajanan Mandir
Road, Wadgaon, Chandrapur,
Tah. and District Chandrapur,
through its President.
 - 2] Veena Donuji Tumble,
Aged about 39 years, Occu: Service,
R/o Pimpalgaon, District – Gadchiroli,
C/o Mahila Junior College, Gadchiroli,
Tahsil and District Gadchiroli.

...V E R S U S...

- RESPONDENTS**
- 1] Deputy Director of Education,
Nagpur Division, Nagpur.
 - 2] The State of Maharashtra, through its
Secretary, Department of School
Education, Mantralaya Mumbai-32.

Mr. P.B. Patil, counsel for the petitioners.

Mr. N.S.Rao, AGP for the respondent Nos. 1 and 2.

CORAM : **AVINASH G. GHAROTE &**
URMILA JOSHI-PHALKE, JJ
DATE : **06/09/2023**

JUDGMENT : (PC)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioners challenge the order dated 28/07/2021 (page - 100) issued by the Respondent No.1, whereby the approval sought to the appointment of the Petitioner No.2, in pursuance to the judgment of the learned School Tribunal, Chandrapur dated 13/03/2020 in STC Appeal No. 28/2017 (page- 63), has been refused and so also, the communication dated 02/08/2022 by the Respondent No.1, which confirms the earlier rejection dated 28/07/2021.

3. The basic facts leading to the petition are, that the Petitioner No.2 who is belonging to the O.B.C. category, was initially appointed as a Junior College Lecturer in the year 2009, in the post reserved for S.T. category candidate, as no such candidate was available. However, approval to such appointment was rejected by the Respondent no.1.

4. In pursuance to the permission granted by the Respondent No.1 on 22/03/2012, the post was again advertised on 29/09/2012 for filling up the vacancies which were reserved for the ST/VJ categories. Since, no candidate was available from both the categories, the Petitioner No.2 was again appointed as a Lecturer in the Junior College on 08/10/2012. However, again her approval was rejected by the Respondent No.1, as a result of which, her services came

to be terminated on 9/9/15 (Page-62). This termination was challenged by the Petitioner No.2 before the learned School Tribunal, Chandrapur and the learned School Tribunal, Chandrapur on 13/03/2020, has allowed the appeal partly by setting aside the termination order dated 09/09/2015 and directing the reinstatement of the petitioner No.2 in the original post with 70% backwages as indicated therein. It is in pursuance to this, the proposal sent by the management for approval of the petitioner No.2 has been rejected by the aforesaid communications which are impugned herein.

5. Mr. Patil, learned counsel for the petitioners, by inviting our attention to the language of the communications submits, that they are based upon an incorrect legal and factual premise. He contends, that since no candidate was available for the post of Junior College Lecturer, which was reserved for the ST/VJ category under Rule 9(9) (a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the MEPS Rules'), as then applicable, it was permissible for the management to fill up the vacancy by selecting a candidate from the other remaining categories as per Sub Rule 7 of Rule 9 of the MEPS Rules and since no other candidate was available, in respect of any category mentioned above, the selection of the Petitioner No.2 was clearly legal and valid and the rejection of the approval by the respondent no.1 on this ground, was clearly not justified.

6. Though, this position is controverted by Mr. Rao, learned AGP on behalf of the respondent/State, what is material to note is that the finding has been rendered by the learned School Tribunal in its judgment dated 13.03.2020, that the appointment of the Petitioner No.2 was by following due process of law and in consonance with the provisions of Rule 9(7) and (9) of the MEPS Rules, which finding has attained finality, as there is no challenge raised by anyone to such a finding. In light of this position, he contends that it was not permissible for the Respondent No.1 to have rejected the approval.

7. Another ground, which has been raised by him is that, it was necessary for the Respondent No.1 to consider the situation as was existent on 29/9/2012 and 8/10/12, the dates of the advertisement and the appointment respectively for determining the position of the vacancies. However, the position of the vacancies have been determined in relation to a time sequence, which is subsequent thereto, for rejection of the approval which was also not permissible.

8. Mr. Rao, learned AGP for respondents/State submits, that though there cannot be any dispute regarding the findings rendered by the learned School Tribunal, Chandrapur, in its judgment dated 13/03/2020, still it was permissible for the Respondent No.1 to make an enquiry regarding the non- availability of the candidates belonging to

the other categories as contemplated by the then existing Rule 9(7) of the MEPS Rules, and therefore, the matter needs to be remanded back to the Respondent No.1 for this purpose.

9. In our considered opinion, since the learned School Tribunal, Chandrapur, has already considered the position about non-availability of candidates belonging to any of the categories in Rule 9(7) of the MEPS Rules prior to the category to which the Petitioner No.2 belongs, as is apparent from a perusal of paras-30 and 33 of the learned School Tribunal's judgment dated 13/03/2020, it was not permissible for the Respondent No.1 to reopen the controversy. That apart, when a query was put to Mr. Rao, learned AGP for respondents/State as to in what manner and on the basis of what material, the Respondent No.1 after a passage of 11 years would be in a position to determine, whether the candidates belonging to the categories listed earlier to the category to which the Petitioner No.2 belongs, he is unable to point out any such material on record. That apart, it would be also necessary to note, that the impugned orders also do not indicate the rejection of the approval on this ground. In that view of the matter, it would not be appropriate and necessary for remand of the matter to the respondent No.1 for this purpose.

10. It is also necessary to note, that the

determination of the approval ought to have been made by the Respondent No.1 based upon the factuality of the position regarding availability of the vacancies as existed on 29/09/2012, the date on which the advertisement was issued and on 08/10/2012, the date of the appointment of the Petitioner No.2. However, both the impugned orders dated 28/07/2021 (Page-100) and 02/08/2022 (Page-108), indicate that this has not been so done and the approval has been refused on the basis of a position, which has developed subsequent in point of time, which according to us, was not permissible. It is also material to note, that the order dated 28/07/2021 also indicates an admitted position, that in the academic year 2009-2010, according to the strength of the students, there was requirement of 9 full time teachers, considering which, the Petitioner No.2 could not have been refused the approval.

11. In view of the above position, the impugned orders dated 28/07/2021 and 02/08/2022 cannot be sustained and the same are hereby quashed and set aside.

12. The Respondent No.1, is directed to grant approval to the appointment of the Petitioner No.2, as directed by the learned School Tribunal, Chandrapur dated 13/03/2020.

13. The petition is accordingly **allowed** in the above terms.

14. The approval shall be granted accordingly within a period of one month from today.

15. **Rule** is made absolute in the above terms. No costs.

(URMILA JOSHI-PHALKE, J)

(AVINASH G. GHAROTE, J.)