



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.666 OF 2019**

Indeep s/o Bhagwan Patil

Age- 40 years, Occu- Assistant Teacher,
R/o- working in the Secondary & Higher
Secondary School- Gajanan Vidyalaya,
Golegaon, Tq. Sillod,
District:- Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai- 400032.
2. The Deputy Director of Education,
Directorate of Education,
State of Maharashtra,
Station Road, Aurangabad.
3. The Education Officer (Secondary),
Zilla Parishad, Aurangabad,
Dist-Aurangabad.
4. The President,
Bhartiya Shikshan Sanstha,
(Reg No.F-731-ABD)
N-12, Hudco, Roza Baug, Aurangabad,
Mr. Ashok vitthal Patil,
Age- 66 years, Occu- President,
R/o- N-12, Hudco, Aurangabad.
5. The Secretary,
Bhartiya Shikshan Sanstha,
(Reg No.F-731-ABD)
N-12, Hudco, Roza Baug, Aurangabad,
Shri Abhinandan Ashok Patil,
Age- 30 years, Occu- Secretary,
R/o As Above.
6. The Head Master,
Gajanan Vidyalaya, Golegaon,
Tq- Sillod, Dist- Aurangabad.

..Respondents

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Mrs. Nayna Patil h/f Ms. S. P. Mahajan, Advocate for the Petitioner.
Mr. N. S. Tekale, AGP for Respondent Nos.1 to 3.

Mr. D. B. Rode and Mr. A. V. Indrale Patil, Advocate for Respondent Nos.4 to 6.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 05th MARCH 2024.

JUDGMENT PRONOUNCED ON :- 18th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India, impugning the order dated 24.12.2018 passed by the Education Officer (Secondary), Zilla Parishad, Aurangabad by which the proposal for approval to the petitioner's appointment as an Assistant Teacher in Secondary and Higher Secondary School came to be turned down. The petitioner also seeks to issue directions to grant such proposal, so also released of consequential monetary benefits.

3. The petitioner contends that respondent no.5-Management made correspondence with respondent no.3 seeking permission to advertise the post of Assistant Teacher that was falling vacant at respondent no.6-School. Unfortunately, it was not responded. The respondent no.5-Management considering the interest of the students, issued an advertisement dated 25.05.2002 in "Daily Lokpatra" inviting qualified aspirants to submit their candidatures. The petitioner responded to the said advertisement. He was interviewed on 03.06.2002 by duly constituted selection committee. Being qualified and meritorious candidate, an appointment order dated 10.06.2002 was issued to him as an Assistant Teacher with respondent no.6-School. The petitioner joined the said post on 11.06.2002 and discharging his duties. The petitioner further clarifies that his appointment was

against clear vacant and permanent post on unaided division of the school. However, in Academic year 2005-2006, respondent no.6 was held eligible for grant-in-aid. Consequently, the respondent-Management forwarded the proposal to respondent no.3-Education Officer for grant of approval to the appointment of the petitioner.

4. The respondent no.3 sat over proposal for years together. Consequently, petitioner was forced to approach this Court by filing Writ Petition 4388/2012, seeking direction to decide his proposal. This Court while issuing notice to the respondents granted interim protection to the services of the petitioner and finally disposed of the writ petition vide order dated 30.06.2017 with direction against respondent no.3-Education Officer to decide the pending proposal within a period of six weeks.

5. In pursuance of the directions given by this Court, respondent no.3-Education Officer took his decision, however, refused to grant approval to the petitioner's appointment, mainly on the ground that there is backlog of reserved category posts as per roster sanctioned by the B.C. Cell and there were 11 surplus teachers on the establishment of the schools run by respondent no.5-Management for Academic Year 2016-2017. According to the petitioner, the impugned order is erroneous, arbitrary and based on misconception of fact of law.

6. The respondent no.3-Education Officer filed affidavit-in-reply stating that at the time of appointment of the petitioner i.e. on 10.06.2002 there were total 47 posts sanctioned posts with respondent no.4-Management. All the posts were filled. As per reservation roster, 23 posts ought to have been filled in from Open category and 24 posts were reserved as per roster verified by the B.C. Cell. There was backlog of about 11 posts as on 27.02.2003.

7. The respondent nos.4, 5 and 6 filed affidavit-in-reply. It is contended that respondent no.4-Society made every possible attempt to fill up backlog of reserved posts and during the period from 2005 to 2012 they have filled in 11 reserved category posts. However, due to non-availability of the candidates from respective reserved category, such backlog could not be cleared. At the time of the petitioner's appointment there was no such backlog.

8. An additional affidavit-in-reply dated 08.01.2021 is filed on behalf of respondent no.3 to contend that even at the time of the petitioner's appointment there was backlog of reserved category.

9. Having considered submissions advanced and after going through the documents tendered into service by the respective parties, it can be gathered that petitioner is appointed at respondent no.6-School in the year 2002 since then he is performing his duties. At the time of the petitioner's appointment, the School was not receiving any grant-in-aid. The proposal for approval to the appointment of the petitioner was moved after respondent no.6-School was held eligible to receive grant-in-aid. The said proposal was kept pending. By impugned order dated 24.12.2018 respondent No.3 rejected proposal. The conclusion part of the impugned order depicts that petitioner has been appointed on 10.06.2002 from Open Category against unaided post of Assistant Teacher in respondent no.6-School. By giving reference to the staffing pattern and reservation roster dated 13.10.2011 it has been observed that there was backlog of 18 reserved category posts with respondent no.6-School run by respondent no.4-Management as such, there is violation of Act of 2001. It is further held that 11 surplus teachers are working in the Secondary School on the date of the impugned order.

10. The aforesaid observations/conclusions clearly depicts that respondent no.3 decided proposal for grant of approval for appointment of 2002, on the basis of reservation roster certified in the year 2011, and number of surplus teachers as on 2018. It is true that, the impugned order takes survey of the staffing pattern right from 2006-2007 and first time in the year 2014-2015 surplus teachers were found as compare to the sanctioned posts. Evidently the approach of respondent no.3 while negating the proposal seeking to the petitioner's appointment is based on irrelevant consideration. When petitioner is appointed in the year 2002, respondent no.3 ought to have considered the staffing pattern and availability of the post as on the date of the petitioner's appointment. If in the year 2014-2015 the posts in the School were declared surplus that would be irrelevant while considering the petitioner's proposal for grant of approval.

11. At this stage, reference can be given to the judgment of the Division Bench of this Court in the matter of ***Namita Narayan Jha & anr. Vs. Education Officer & ors.***¹, wherein it is held that unless it is pointed out that the petitioner has been appointed against backlog post or reserved post, mere existence of the backlog cannot be the reason to deny the approval. Further when the petitioner is appointed against the Open category post, his approval cannot be impeded giving reference of the existing backlog based on reservation roster for the year 2011. Admittedly, at the time of petitioner's appointment the school was run without aid and in the year 2005-2006 the eligibility of respondent no.6 to receive grant-in-aid was approved. In this background, reasons mentioned in the impugned order cannot be countenanced.

12. We are, therefore, of the considered view that the impugned order is liable to be quashed and set aside. Hence, we proceed to pass following order:

¹ 2014 (3) Mh.L.J. 680.

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 24.12.2018 passed by respondent no.3-Education Officer (Secondary), Zilla Parishad, Aurangabad thereby rejecting the proposal for grant of approval to the appointment of the petitioner as an Assistant Teacher with respondent no.6-School is hereby quashed and set aside.
- c. The matter is relegated back to respondent no.3-Education Officer for reconsideration as per staffing pattern and sanctioned post as on date of the appointment of the petitioner i.e. 10.06.2002 keeping in mind the aforesaid observations. The respondent No, 3 education officer shall take his decision after hearing all concern within three months from date of this order.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE