



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4319 OF 2024
WITH
CIVIL APPLICATION NO.4681 OF 2024

- 1) Netaji Subhashchandra Bose Shikshan
Sanstha, Kandhar, Tq-Kandhar,
Dist-Nanded,
Through Secretary,
- 2) The Head Master,
Netaji Subhashchandra Bose Secondary
and Higher Secondary School, Panbhosi,
Tq-Kandhar, Dist-Nanded,
- 3) Venkatesh s/o Shivajirao Devakatte,
Age-26 years, Occu:Peon,
Netaji Subhashchandra Bose Secondary
And Higher Secondary School, Panbhosi,
Tq-Kandhar, Dist-Nanded.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through: The Secretary,
School Education Department,
Mantralaya, Mumbai,
- 2) Regional Deputy Director of Education,
Latur Region, Latur,
- 3) The Education Officer (Secondary),
Zilla Parishad, Nanded.

...RESPONDENTS

...
Mr. M.P. Tripathi Advocate for Petitioners.
Mr. A.M. Phule, A.G.P. for Respondent Nos. 1 to 3.
...

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

DATE : 7th MAY, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. We have heard the learned Advocate for the petitioners for some time on 25th April 2024. Thereafter Civil Application No.4681 of 2024 has been filed for amendment. Now the petitioners want to amend the Petition and thereby want to challenge the Government Resolution dated 11th December 2020 on the ground that the Secondary School Code prescribes staffing pattern and the Government Resolution dated 11th December 2020 is contrary to the said rules.

2. There would not have been any hurdle in allowing the Application for amendment. However, it is to be noted that the petitioners claimed that petitioner No.3 came to be appointed by petitioner No.1 society on the post of peon i.e. Class-IV post vide appointment order dated 28th June 2022 with effect from 1st July 2022. The petitioners contend that the said post had become vacant as the earlier peon, namely, Vitthal Sambhaji Giri stood retired on 30th June 2022. It is contended that thereafter the

proposal was sent for approval for appointment of petitioner No.3, which came to be rejected by order dated 23rd November 2023 on the ground that the said appointment is illegal in view of the Government Resolution dated 10th June 2022.

3. Heard learned Advocate Mr. M.P. Tripathi appearing for petitioners and learned AGP Mr. A.M. Phule for respondent Nos. 1 to 3.

4. Important point to be noted is that petitioner No.1 has not produced on record that prior to the advertisement dated 29th May 2022, whether permission was sought of the Education Officer to fill up the said post. Further petitioner No.3 appears to be belonging to Other Backward Classes / Nomadic Tribe (C, D), as per the caste certificate. The post which is stated to be vacant in the advertisement, is stated to be "Open / NT". What petitioner No.1 wanted to convey, was not clear. Thereafter, after petitioner No.3 came to be selected and appointed, it was on the basis of the consolidated pay of Rs.1700/- per month, for three years. The petitioners themselves appear to have not followed the Government Resolutions. There is absolutely no explanation by the petitioners regarding Government Resolution dated 10th

June 2022 which has been referred in the impugned order dated 23rd November 2023. Learned Advocate for the petitioners relies on the order passed by this Court at Principal Seat in ***Writ Petition No.5058 of 2021 along with companion matters, dated 6th February 2024.*** But it can be seen that in those Petitions Government Resolution dated 28th January 2019 and subsequent follow up Resolution dated 7th March 2019 were challenged, to which we are not concerned.

5. Now, by way of amendment, the petitioners want to challenge Government Resolution dated 11th December 2020, by which the decision has been taken to abolish the posts of peons which would become vacant in private aided schools and further decision has been taken to make an appointment of Class-IV employees in the private schools on contractual basis for which fixed consolidated pay would be permissible and the same would be granted by the Government. Here we would like to say that this Court in ***Writ Petition No. 12492 of 2021 (the Suburban Education Society, Aurangabad and another vs. the State of Maharashtra and others)***, decided on 23rd April 2024, and in ***Writ Petition No. 6046 of 2022 (Deepak s/o Madhukarrao Rajegore vs. the State of Maharashtra and others)***, decided on 10th May

2024, has upheld the legality of the Government Resolution dated 11th December 2020 and therefore, it need not be gone into once again in the present Writ Petition. Under the said circumstance, after coming into force the Government Resolution dated 11th December 2020, there could not have been appointment on any post which became vacant in Class-IV category in private school and therefore, there is no merit in the present Writ Petition and therefore, it deserves to be dismissed.

6. Accordingly, the Writ Petition stands dismissed at the threshold. Pending Civil Application also stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAY24