



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.613 OF 2019

Mrs. Ujjawala w/o Narayan Ghule,
Age- 37 years, Occu- Assistant Teacher,
R/o- working in the Secondary & Higher
Secondary School- Madhyamil Vidyalaya,
Modha (Bk.), 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,
Madhyamik Vidyalaya, Modha,
Tq- Sillod, Dist- Aurangabad.

..Respondents

...

Mr. V. S. Panpatte h/f Mr. V. Y. Patil, 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.

...

**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 release 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 20.06.2005 in "Daily Lokpatra" thereby inviting qualified aspirants to submit their candidatures. The petitioner responded to the said advertisement. She was interviewed on 27.06.2005 by duly constituted selection committee. Being qualified and meritorious candidate, an appointment order dated 30.06.2005 was issued to her as an Assistant Teacher with respondent no.6-School. The petitioner joined the said post on 02.07.2005 and discharging her duties.

The petitioner further clarifies that her appointment was against clear vacant and permanent post on unaided division of the school. However, since Academic Year 2008-2009, respondent no.6 was held eligible for grant-in-aid. Consequently, the respondent-Management had forwarded the proposal to respondent no.3-Education Officer for grant of approval to the petitioner's appointment.

4. The respondent no.3 had sat over proposal for years together. Consequently petitioner was forced to approach this Court by filing Writ Petition No.4318/2012, seeking direction to decide her 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 are 11 surplus teachers on the establishment of the school run by respondent no.5-Management in the 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 02.07.2005 total 156 posts were sanctioned in favour of respondent no.4-Management, 139 posts were already filled in and 17 posts were vacant. As per reservation roster, 75 posts ought to have been filled in from Open category and 81 posts were reserved as verified by the B.C. Cell. There was backlog of about 30 posts as on 03.08.2005.

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. However, 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 appointment of the petitioner in respondent no.6-School in the year 2005 is not in dispute and she is performing her duties since then. At the time of the petitioner's appointment, the School was not receiving any grant-in-aid, therefore, 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. Thereafter, the said proposal was kept pending. The petitioner was required to approach this Court seeking direction against respondent no.3 to take up the proposal for consideration and after directions of this court, hearing was conducted by respondent no.3 leading to impugned order dated 24.12.2018.

10. The conclusion in impugned order depicts that petitioner has been appointed w.e.f. 30.06.2005 from Open Category against unaided post of Assistant Teacher at respondent no.6-School. By giving reference to the staffing pattern and reservation roster dated 13.10.2011, it has been observed that backlog of 18 reserved category posts was existing with respondent no.6-School run by respondent no.4-

Management, as such, there is violation of Act of 2001. It is further observed that there were 11 surplus teachers in the Secondary Schools run by respondent no.4 as on the date of the impugned order.

11. The aforesaid observations/conclusions clearly depicts that respondent no.3 decided proposal for grant of approval for appointment of 2005, 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 approval to the petitioner's appointment is based on irrelevant considerations. When petitioner is appointed in the year 2005, 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 for considering the petitioner's proposal for grant of approval.

12. 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, her approval cannot be impeded giving reference of the existing backlog that too based on roster for the year 2011. Admittedly, at the time of petitioner's appointment the school was run without aid and in the year 2008-2009 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.

¹ 2014 (3) Mh.L.J. 680.

13. Today during course of hearing, a copy of proposal dated 02.07.2006 that was forwarded for grant of approval to the petitioner's appointment is placed before us, which bears seal and signature of the office of respondent no.3. It was forwarded in the year 2006. However, no decision was taken immediately and impugned order has been passed based on subsequent reservation rosters. Therefore impugned order is liable to be quashed and set aside. Accordingly, we proceed to pass following order:

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 and reservation roster as on date of the appointment of the petitioner i.e. 30.06.2005, keeping in mind observations hereinabove. The respondent No.3 shall take fresh decision after hearing respective parties 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