



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

WRIT PETITION NO.2930 OF 2021

1. Surekha Nanabhau Ghongade,
Age: 38 yrs. Occu. Service,
R/o. Pandhrewadi, Tal. Paranda,
Dist. Osmanabad.

2. Manikbaba Vidyalaya Shelgaon,
Tal. Paranda, Dist. Osmanabad,
Through its Head Master,
Shri. Gurudas Dashrat Kale,
Age: 55 yrs, Occu. Service,
R/o. Shelgaon, Tal. Paranda,
Dist. Osmanabad.

..Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Department of School Education
and Sports, Mantralaya, Mumbai-2.

2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.

..Respondents

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Mr. A. S. More, Advocate for the Petitioners.

Mr. S. K. Shirse, AGP for Respondent Nos.1 and 2.

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

JUDGMENT RESERVED ON :- 07th MARCH 2024.

JUDGMENT PRONOUNCED ON :- 19th 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 petitioners approach this Court under Article 226 of the Constitution of India, thereby impugning order/communication dated

15.12.2020 passed by respondent no.2-Education Officer (Secondary), Zilla Parishad, Osmanabad, thereby rejecting the proposal for approval of first petitioner's appointment as an Assistant Teacher with second petitioner -Manikbaba Vidyalaya, Shelgaon, Tal. Paranda.

3. The first petitioner contends that she possess qualification of B.A., B.Ed.. She came across an advertisement dated 19.09.2020 published in 'Daily Sanchar' issued by the President and Secretary of the Shivshakti Shikshan Prasarak Mandal, Shelgaon thereby inviting applications for appointment of the Assistant Teachers at Manikbaba Vidyalaya at Shelgaon. The first petitioner responded to an advertisement and offered her candidature. She was interviewed by the school committee and being a meritorious and suitable candidate, came to be appointed vide order dated 30.09.2020 as a Shikshan Sevak. She joined services on 01.10.2020 as Graduate Shikshan Sevak. The Headmaster of the school forwarded proposal to the office of second respondent, seeking approval to her appointment. However, second respondent refused to grant approval vide impugned communication dated 15.12.2020, firstly for the reason that the appointment is not in conformity with the Government Resolution dated 23.06.2017 i.e. through the Pavitra Portal and secondly the appointment is made during the period of ban on recruitment imposed under Government Resolution dated 04.05.2020. According to first petitioner, she being qualified appointed against clear vacancy, after following due process of law, there was no impediment in approving her appointment. As such, she prays for allowing writ petition.

4. The second respondent -Education Officer (Secondary), Zilla Parishad, Osmanabad filed his affidavit-in-reply and justifies the impugned communication, giving reasons that no appointment made after 23.06.2017 without following the procedure of Pavitra Portal can

be approved. Further, Government Resolution dated 04.05.2020 is faulted while making appointment of first petitioner. According to second respondent, validity of amended MEPS Rules and Government Resolution dated 23.06.2017 is upheld by this Court. The first petitioner does not possess any right to get approval to her appointment, which is made de-hors prescribed procedure.

5. Mr. More, learned Advocate appearing for the petitioners vehemently submits that first petitioner holds requisite qualification for appointment of the Assistant Teacher as per MEPS Act and Rules framed thereunder. She has been appointed after following due process of law. The reasoning given in the impugned communication is contrary to the orders passed by this Court in many such matters. The management has obligation to appoint the teachers against vacancies. However, because of inaction on the part of the Education Officer to grant permission to advertise the post and carry forward recruitment process, the appointments made by the Management cannot be invalidated. He would further place his reliance on the judgment of this Court in case of ***Laxman Bapu Gorad and Others Vs. State of Maharashtra and Others***¹ to contend that the Government Resolution dated 23.06.2017 would not apply to the appointments made on unaided post.

6. Mr. Shirse, learned AGP appearing for respondent nos.1 and 2 supports the impugned order.

7. Having considered submissions advanced and on perusal of the documents placed into service, it is evident that first petitioner holds requisite qualification for appointment on the post of Graduate Teachers. In response to the advertisement issued by the Management of the school, she applied and faced the selection process. Consequently,

1 2021 SCC OnLine Bom 13530.

she has been selected and appointed as Shikshan Sevak vide appointment order dated 30.09.2020. The proposal for approval to her appointment was forwarded by the Headmaster of Manikbaba Vidyalaya, that has been rejected giving reasons that the appointment is not made through the Pavitra Portal and the first petitioner has not cleared Teachers Eligibility Test. Further, there was ban on recruitment during relevant period.

8. Section 5 of the MEPS Act, 1977 put certain obligation on the Management of the private schools. Sub-Clause (1) of Section 5 of the MEPS Act, 1977 mandates that the Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy. Keeping in mind the aforesaid obligation on the Management, if the copy of staff approval for the year 2019-2020 in respect of Manikbaba Secondary and Higher Secondary Vidyalaya is considered, it can be observed that there were two vacancies, one each on aided and unaided division. Therefore, there is reason to believe that the appointment of the first petitioner is made against clear vacancy. There is no dispute as regards to the requisite qualification possessed by her.

9. Pertinently, the Management of the school submitted a communication to the office of second respondent intimating vacancies on the establishment of the school and urged to permit publication of the advertisement for recruitment of the vacant posts. Both the communications are duly acknowledged by the office of second respondent. The first petitioner specifically contends that there was no response from the Education Officer. Consequently, the Management issued the advertisement in 'Daily Sanchar' dated 19.09.2020 to which she responded. It is true that school Management, before proceeding to fill the vacancies, ascertained from the Education Officer, if any

suitable person is available from list of surplus teachers for absorption of the school. Although, Management endeavored to seek surplus teachers, if there is no response from the Education Officer, the Management would be left with no option than to proceed further with the advertisement and appoint teachers in the interest of the school and pupils. In the present case, the Management has twice made communication with the gap of two months. The last such communication was made on 12.03.2020. Finally on 19.09.2020 the advertisement was issued. The interviews were conducted leading to the appointment of first petitioner. In this background, first petitioner or Management cannot be faulted.

10. So far as the appointment through Pavitra Portal is concerned, although the Education Officer refers to the Government Resolution dated 23.06.2017 by which system for appointment of the Teachers through Pavitra Portal has been introduced, there is nothing on record to indicate that the Pavitra Portal was made operational at the time of first petitioner's appointment. **So far as applicability of the TET is concerned, issue is pending before the Supreme Court of India. In such cases, appointment can be made subject to the final outcome of the decision as to whether TET is compulsory qualification for appointment of Teachers.**

11. One more reason incorporated in the impugned order is that there was ban on recruitment in terms of Government Resolution dated 04.05.2020. *Prima facie*, such ban may not apply to the appointments made by the private Management in the school. In view of the aforesaid observations, the impugned order dated 15.12.2020 passed by second respondent-Education Officer (Secondary), Zilla Parishad, Osmanabad is liable to be quashed and set aside with direction to reconsider the proposal for grant of approval to the appointment of first petitioner

without insisting for procedure as per Government Resolutions dated 23.06.2017 and 20.06.2018. Resultantly, following order is passed:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 15.12.2020 passed by second respondent -Education Officer (Secondary), Zilla Parishad, Osmanabad is hereby quashed and set aside.
- c. The second respondent-Education Officer shall consider the proposal seeking grant of approval to the appointment of first petitioner without insisting for the procedure as per Government Resolutions dated 23.06.2017 and 20.06.2018, keeping in mind observations as indicated above.
- d. The petitioners shall appear before second respondent -Education Officer on 20.03.2024 alongwith requisite record. The Education Officer after hearing all the concerned shall take his decision afresh within a period of two months from the date of appearance of the parties and shall forthwith communicate them.
- e. Writ Petition is disposed of.
- f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE