



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2380 OF 2022

Parmeshwar S/o Mahadu Shirde,
Age-33 years, Occu:Service,
R/o-Jaldhara, Tq-Kinwat,
Dist-Nanded.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai-32,
- 2) Regional Deputy Commissioner,
Social Welfare Department,
Aurangabad Division, Aurangabad,
- 3) The Assistant Commissioner,
Social Welfare Office, Parbhani,
- 4) Shri Sevadas Shikshan Prasarak Mandal,
27, Shantisadan, HIG Colony,
Near ITI Nanded,
Through its Secretary / President,
- 5) Secondary Ashram School,
Phuttalav (Banvas), Tq-Palam,
Dist-Parbhani,
Through its Head Master.

...RESPONDENTS

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Mr. V.S. Panpatte Advocate for Petitioner.
Mr. S.K. SHirse, A.G.P. for Respondent Nos. 1 to 3.
Mr. V.V. Jahagirdar Advocate h/f. Mr. B.P. Gonare Advocate
for Respondent Nos. 4 and 5.

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

DATE OF RESERVING JUDGMENT : 8th APRIL 2024

DATE OF PRONOUNCING JUDGMENT : 30th APRIL 2024

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

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. Present Petition has been filed for following reliefs:-

"B) By issue of writ of mandamus or order or direction in the like nature, the impugned order dt. 31.07.2021 passed by the Respondent No.3 Assistant Commissioner, Social Welfare, Parbhani may kindly be quashed and set aside.

C) By issue of Writ of mandamus or Order or direction in the like nature, the Respondent Nos. 1 to 3 may please be directed to grant approval to the appointment of petitioner as Jr. Clerk w.e.f. 07.07.2019 with further direction to include his name in Shalarth Pranali and release salary of the petitioner since the date of the appointment to till today within a period of six (6) weeks."

3. The factual matrix leading to the Petition are that respondent No.4 is registered educational institution, which runs

respondent No.5 school. The post of junior clerk became vacant due to death of earlier employee and therefore, respondent No.4 decided to fill up the said post by resolution dated 15th June 2018. An advertisement came to be issued 21st June 2018. The said post was reserved for Scheduled Tribe (for short "ST") category. In all five candidates had applied and were called for interview. The petitioner was selected and at that time he was having educational qualification as B.A. B.Ed., with having completed MS-CIT Course. The petitioner was also possessing caste validity certificate. Appointment order came to be issued in his favour on 7th July 2019 on the post of junior clerk in pay-scale. Proposal was then submitted on 25th September 2019 by the headmaster of respondent No.5 for grant of approval to the appointment of the petitioner. The said proposal was not decided immediately. It came to be rejected by respondent No.3 on 31st July 2021 on the ground that in view of Government Resolution dated 4th May 2020 no post was allowed to be filled up. The petitioner says that in fact his appointment is prior to 4th May 2020 and therefore, the said Government Resolution is not applicable to him. Surplus candidate was sent to the school by order dated 12th January 2021. Even the surplus candidate did not approach respondent No.5 school for joining, still the

rejection order was passed, which is illegal and deserves to be set aside.

4. Affidavit-in-reply has been filed by one Geeta Dnyandeo Gutthe, who is working as Assistant Commissioner, Parbhani on behalf of respondent Nos. 1 to 3. It is contended that vide Government Resolution dated 3rd October 2017, corrigendum dated 21st March 2018 and Government Resolution dated 10th February 2022, respondents had introduced quasi-judicial system for redressal of the grievances of the institution as well as for employees working in Government approved VJNT, OBC & SBC Department's grant-in-aid ashram schools / residential ashram schools / vidyaniketan schools. The petitioner ought to have approached the said forum. The Writ Petition directly to the High Court is not maintainable. It is then stated that respondent Nos. 4 and 5 failed to inform the higher authorities in respect of need of junior clerk after the post became vacant due to the death of earlier employee. After verifying available record, the surplus employee could have been made available to respondent No.5 school. Further, there was ban by Government Resolution dated 16th October 2012 stating that it is the policy decision of the Government that unless and until there is 100% absorption

of the surplus employees in the State; no new recruitment should be undertaken. Therefore, the appointment of the petitioner is against the said ban. It is further stated that there are already excess employees in the ashram schools all over State who are permanent employees, waiting for their turn to absorb. Due to Covid-19 Pandemic situation, the finance department had issued Government Resolution dated 4th May 2020 and 24th June 2021 putting restrictions regarding the budgetary allocation and therefore, the advertisement could not have been issued and the appointment ought not to have been made. Therefore, the rejection of the proposal for approval is proper.

5. Heard learned Advocate Mr. Panpatte for the petitioner, learned AGP Mr. Shirse for respondent Nos. 1 to 3 and learned Advocate Mr. Jahagirdar holding for learned Advocate Mr. B.P. Gonare for respondent Nos. 4 and 5. In order to cut short, we would like to say that the learned Advocates appearing on behalf of the respective parties have argued in support of their respective contentions.

6. Learned Advocate for the petitioner has relied on the

decision of this Court in *Smt. Shailaja w/o Ashokrao Walse vs. the State of Maharashtra and others, 1991(1) ALL MR 452*, wherein it is held that an appointment of a teacher either in the primary school, secondary school, junior college, is required to be approved by the Education Officer and the Education Officer while discharging this duty performs an implied statutory function under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules. Learned Advocate therefore, submits that the Education Officer ought to have considered the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and the rules thereunder and ought not to have rejected the proposal simply on some unfounded grounds. Learned Advocate for the petitioner further relies on the decision of this Court in *Padmin Sonerao Hande vs. the State of Maharashtra and others (Writ Petition No.5241 of 2021, decided on 11th March 2022)*, wherein it has been held that the Government Resolution coming into force after the appointment of an employee, cannot be made applicable retrospectively.

7. At the outset, it is to be noted that the proposal forwarded by respondent No.5 on 25th September 2019 was not decided by

respondent No.3 immediately. It came to be decided on 31st July 2021 pursuant to letter dated 17th June 2021 which was given to respondent No.3. There is absolutely no reference to the proposal dated 25th September 2019 which was received by the office of respondent No.3 on 1st October 2019. When the said proposal was pending, order in respect of surplus employee assigning to respondent No.5 appears to have been passed on 12th January 2021 and thereafter the impugned order came to be passed on 31st July 2021. While rejecting the proposal, the reason was mentioned that the finance department had taken decision to put ban on recruitment on the basis of which Government Resolution dated 4th May 2020 came to be issued. The said Government Resolution appears to have been issued pursuant to Covid-19 situation and the financial crisis the Government was facing. However, it is to be noted that when all the documents were produced with the proposal for approval, then those ought to have been scrutinized. The post of junior clerk to which the petitioner was appointed, was reserved for Scheduled Tribe category candidate and at the time of appointment of petitioner, there was no such financial crisis in the Government as later on arose due to Covid-19 situation.

When the advertisement was also specific, it cannot be said that it would affect the appointment of the petitioner.

8. No doubt, respondent Nos.4 and 5 ought to have informed about the vacancy, but here the fact is that the earlier employee Shri Birajdar Dhanraj Tulshiram expired on 1st March 2013. Assistant Commissioner from the office of Divisional Commissioner has inspected the staffing pattern and *Bindu Namawali*, on 28th August 2014. It has been stated in the remark that out of two reserved posts, one should be filled in from Scheduled Caste category and another should be filled in from Scheduled Tribe category and thereafter when the post becomes vacant then it should be filled in from VJNT and OBC category. Thus the roster was set by the said Assistant Commissioner. He has specifically stated that one post is therefore vacant from Scheduled Caste category and another post from Scheduled Tribe category. Thus, on and from 28th August 2014, the office of respondent No.3 had knowledge about the vacancy of the post. The process of filling up that post has been undertaken four years thereafter. During the said period of four years, certainly respondent Nos. 1 to 3 could have sent any surplus candidate in respondent No.5 school.

9. Though respondent Nos. 1 to 3, through affiant Ms. Geeta Gutthe, says that surplus candidate was sent but was not allowed to join by respondent No.5 school, it has not been stated that since when said candidate was declared as surplus. After waiting for considerable time of almost five years, that means keeping the said post vacant for five years, the appointment of the petitioner has been made after following due process, who is from Scheduled Tribe category (as verified by the office of respondent No.2), on the post which was reserved for the Scheduled Tribe category. The ban or restrictions in view of the Government Resolution dated 4th May 2020 will not be allowed to apply retrospectively to the appointment of the petitioner as his appointment is dated 7th July 2019.

10. Now, in the affidavit-in-reply filed on behalf of respondent Nos. 1 to 3, more reasons are tried to be assigned i.e. as per the Government Resolution dated 16th October 2012 it has been resolved that unless and until there is 100% absorption of surplus employees, no new recruitment should be made. The Government, as it is the experience of this Court, is stretching the said Government Resolution dated 16th October 2012 too far and in none of the matters it is tried to be explained that after

the said Government Resolution, what steps were taken by the Government for 100% absorption of the surplus employees. No clear data is ever given. Merely mentioning that such Government Resolution was in existence, will not be therefore, sufficient. Under the said circumstance, the impugned order deserves to be set aside. In view of above, we pass following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The impugned order dated 31st July 2021 passed by respondent No.3 is quashed and set aside.

(III) Respondent No.3 is directed to grant approval to the appointment of the petitioner as junior clerk with effect from 7th July 2019 and to take up the further process of inclusion of the name of the petitioner in *Shalarth Pranali* and also to release salary of the petitioner, including arrears of salary, as per rules.

(IV) The entire exercise of grant of approval to the appointment of the petitioner till the payment of salary, to be undertaken and completed within a period of THREE MONTHS from today.

(V) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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