



Corrected copy : Corrections have been carried out in view of the speaking to the minutes of the order dated 20.06.2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4344 OF 2022

Monali Vinodrao Bhuyar,
Age: 38 years, Occu.: Service as
Shikshan Sevak, R/o. No-5,
Gulmohar Colony, Cidco,
Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
3. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
4. The Superintendent,
Pay and Provident Fund Unit,
(Secondary), Aurangabad.
5. Gram Shikshan Samiti,
N-5, Cidco, Aurangabad,
Through its President/Secretary.
6. Jijamata Girls High School,
N-5, Cidco, Jijamata Colony,
Aurangabad.
Through its Head Master.

.. RESPONDENTS

...
Mr. Uttam B. Bondar, Advocate for the petitioner.
Mr. K. S. Patil, AGP for respondent Nos.1 to 4 – State.
Mr. V. S. Panpatte, Advocate for respondent No.5.
...

**CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.**

DATE : 11 JUNE 2024.

JUDGMENT [Per Shailesh P. Brahme, J.] :-

. Rule. Rule is made returnable forthwith. Heard this matter finally with the consent of all the parties, at the admission stage.

2. Petitioner is Shikshan Sevak, who is aggrieved by rejection of her proposal for approval to her appointment on the ground that her appointment was not made through Pavitra Portal.

3. It is the case of the petitioner that she belongs to Scheduled Tribe Thakur and possessing requisite qualification for the appointment as a Shikshan Sevak. A permanent vacant post was created because of the superannuation of one of the teachers in the respondent No.6 School. Respondent – Management sought permission of the Education Officer vide application dated 02.08.2021. As there was no response, the Management proceeded to recruit the post by issuing advertisement on 05.09.2021. She was appointed on 11.09.2021 as a Shikshan Sevak for the period of three years. The proposal seeking approval came to be rejected by respondent No.3 by order dated 18.02.2022, which is under challenge.

4. Learned Counsel for the petitioner submits that petitioner was appointed after following due procedure of law and entitled to receive approval. He would submit that though Government Resolutions dated 23.07.2017 and 07.02.2019 were issued, Pavitra Portal has not been

put to the desired use. He would submit that impugned order is discriminatory because number of teachers have been given approval for their appointment, though their appointments were not through Pavitra Portal.

5. Respondent Nos.5 and 6 support the petitioners. Learned Counsel Mr. V. S. Panpatte for respondent Nos.5 and 6 would adopt the submissions of the Advocate of the petitioner. He has placed on record documents to show that Pavitra Portal has not been in operation. He would rely on couple of judgments, which are annexed to his reply. He would further vehemently submit that from the year 2019 till January 2023, no advertisement was issued by the Maharashtra State Examination Council for recruiting the post of teachers through Pavitra Portal. On 31.03.2023, an advertisement was issued, meaning thereby the managements of the private schools could not have waited for such a long spell for recruiting the teachers.

6. Per contra, learned AGP defends impugned order on the basis of affidavit-in-reply. He would submit that there has been insistence on recruitment of the teachers in the private schools through Pavitra Portal only, which is reiterated by Government Resolution dated 07.02.2019. Learned AGP relies on the judgment of the co-ordinate Benches rendered in the matter of **Pravin Bodhu Kasbe Vs. State of Maharashtra and others**, [Writ Petition No.3142 of 2020 decided on

03.08.2021] and Late Annasaheb Tandale Shikshan Prasarak Mandal and others Vs. The State of Maharashtra and another, [Writ Petition No.9924 of 2021 decided on 20.10.2022]

7. We have considered the rival submissions of the parties. Petitioner belongs to Scheduled Tribe and she claims to have been appointed against a vacancy of Scheduled Tribe. This fact is supported by extracts of the roster produced on record. Application seeking permission to recruit a backlog of Scheduled Tribe category was submitted on 02.08.2021 by the Management to the Education Officer. It bears the acknowledgment of the Education Department of Zilla Parishad. There is no reason to disbelieve the document. We do not find that any response was given by the Education Officer to this. Thereafter advertisement appears to have been issued on 05.09.2021. Then the petitioner was appointed by letter dated 15.09.2021 against vacancy of backlog of Scheduled Tribe.

8. We have gone through the impugned order passed by the respondent – Education Officer. Only reason cited for rejecting proposal was that the appointment of the petitioner was not made by following procedure contemplated by Pavitra Portal or as per Government Resolution dated 07.02.2019. Impugned order does not reflect that the Education Officer has taken into consideration endeavour of the Management seeking permission, issuance of the

advertisement, availability of the sanctioned post or backlog of a post reserved for Scheduled Tribe. It is not enough for the Education Officer to simply reject the proposal for not following Government Resolution dated 07.02.2019.

9. We have noticed that the recruitment through Pavitra Portal was sought to be introduced by Government Resolutions dated 23.06.2017 and 20.06.2018. Superseding these, Government Resolution dated 07.02.2019 was issued. Thereafter, there are various judgments and orders pronounced by the High Court. Out of them, learned AGP has referred to the judgment rendered in the matter of **Pravin Bodhu Kasbe (Supra)** and **Late Annasaheb Tandale Shikshan Prasarak Mandal (Supra)**. A co-ordinate bench rendered judgment in **Pravin Bodhu Kasbe (Supra)** on 03.08.2021 rejecting the petition filed by an employee challenging refusal of proposal for approval on similar grounds. In paragraph No.10, certain directions were issued to the Education Officer and adherence to Government Resolution dated 23.06.2017 was insisted. Strict implementation of newly amended Rule 9(2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981, was also emphasized. Facts of the present case are distinguishable from the facts of that case.

10. In the matter of **Late Annasaheb Tandale Shikshan Prasarak**

Mandal (Supra), judgment of **Pravin Bodhu Kasbe (Supra)** was followed. It was a petition filed by the Management challenging order of Education Officer, which came to be dismissed by judgment dated 20.10.2022.

11. We have considered similar challenge in the matter of **Shaikh Jaweria Khadarsab Vs. The State of Maharashtra Through its Secretary and Others [Writ Petition No.13150 of 2022 decided on 10.6.2024]**. It was vehemently argued that the recruitment through Pavitra Portal has not been enforced. Noticing number of judicial orders and orders of Education Department granting approval despite non adherence to the procedure of recruitment through Pavitra Portal, we recorded following findings :-

"4. We are pointing out the aforementioned state of affairs in juxtaposition to the various orders passed by this Court, whereby in view of the fact that in spite of Government Resolution dated 23.06.2017, at no point of time recruitment process was undertaken through Pavitra Portal and the directions were issued to consider the individual cases for grant of approval, ignoring the fact that the recruitment was undertaken de hors the Pavitra Portal.

5. Pertinently, it is also being pointed out that by a circular dated 07.07.2023, the Ministry of School Education had instructed all the Divisional Commissioners, Chief Officers and the Commissioner of Education, inter alia pointing out that due to pendency of

several writ petitions, the recruitment process could not be undertaken through Pavitra Portal in a timely manner resulting in there being shortage of eligible teachers to impart education. Permission was granted to make appointments on contractual and temporary basis on payment of some honorarium. This is clearly indicative of the fact that even the State has been aware that the Pavitra Portal could not be put to desired use irrespective of the objective with which it was issued.

6. Additionally, the petitioner has annexed several approval orders granted to individual teachers who have been appointed after Government Resolution dated 23.06.2017 was passed."

12. In the wake of above situation, we have to record that Education Officer in the impugned order has not considered all the relevant aspect of the matter. Considering the above judicial pronouncements, there is reason to believe that Pavitra Portal has not been put to desired use. We do not propose to lay down that the directions issued by the coordinate bench in the matter of **Pravin Bodhu Kasbe (Supra)** cannot be adhered to. Education Officer is expected to examine implementation of Rule 9(2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 in every case, because that is the amended statutory provision. Under these circumstances, we find that ends of justice would be met, if the matter is relegated to the Education Officer to take the decision.

13. The writ petition is partly allowed.
14. The impugned order dated 18.02.2022 passed by respondent No.3 – Education Officer is quashed and set aside.
15. Respondent No.3 – Education Officer shall consider proposal afresh on its own merits as well as on the basis of law laid down in this regard, but shall not reject the proposal on the ground that the appointment was not through Pavitra Portal. The decision shall be taken within a period of six weeks.
16. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm