



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

WRIT PETITION NO.539 OF 2021

Smt. Neeta D/o Vasantrao Aeripelwar
Age: 40 years, Occup: Service as Assistant Teacher,
R/o: Kinwat, Tq.: Kinwat, Dist.: Nanded. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad, Nanded.
3. Cosmopolitan Education Society,
Kinwat, Tq.: Kinwat, Dist.: Nanded,
Through its President/Secretary.
4. Cosrnopolitan Vidyalaya,
Kinwat, Tq.: Kinwat, Dist.: Nanded,
through its Head Master. ..Respondents

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Mr. V. S. Panpatte, Advocate for the Petitioner.
Mrs. M. N. Ghanekar, AGP for Respondent Nos.1 and 2.
Mr. A. B. Tele, Advocate for Respondent Nos.3 and 4.

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

JUDGMENT RESERVED ON :- 04th APRIL 2024.

JUDGMENT PRONOUNCED ON :- 15th APRIL 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 impugns the order dated 25.06.2020 passed by respondent no.2-Education Officer (Secondary), Zilla Parishad, Nanded declining to grant approval to her appointment as Shikshan Sevak and release of consequential pay scale.

3. Mr. Panpatte, learned Advocate appearing for the petitioner submits that respondent no.3-Educational Institution runs respondent no.4-School, which receives grant-in-aid from the State Government. On 31.08.2014, a permanent teacher namely Shri. N. G. Sonale retired on attaining the age of superannuation and the post of an Assistant Teacher from OBC category had fallen vacant with respondent no.4-School. The correspondence was made on behalf of the School to the Education Officer regarding vacancy and seeking permission to fill up the post by issuing advertisement. Since, there was no response from the office of respondent no.2-Education Officer, an advertisement dated 12.09.2014 was issued by the Management inviting application from the eligible candidates from OBC category. The petitioner being qualified and eligible, came to be appointed. She has been selected against the post, consequently management issued an appointment order dated 23.09.2014 as Shikshan Sevak for the period of three years. Immediately, the petitioner reported on duty.

4. The proposal seeking approval to the petitioners appointment was forwarded to respondent no.2-Education Officer. However, the same was kept pending. Consequently, Writ Petition No.11197/2016 was filed before this Court, wherein directions were issued to respondent no.2 to decide the pending proposal within a period of three months. On 28.02.2017, respondent no.2 passed an order rejecting proposal giving reason that there was ban on the

recruitment as per Government Resolution dated 02.05.2012 and surplus teachers were available. The petitioner challenged the said order in Writ Petition No.4207/2017. This Court after considering the rival submissions, partly allowed the Writ Petition vide order dated 25.09.2019 directing respondent no.2 to reconsider the proposal with rider that it shall not be rejected for the reasons incorporated in the order dated 28.02.2017. The respondent no.2 vide order dated 25.06.2020 again rejected the proposal on very same grounds i.e. availability of 9 surplus teachers and non-availability of posts as per staffing pattern. Mr. Panpatte, learned Advocate would submit that in fact surplus teachers were already absorbed in some other schools. The petitioner is teaching to 9th and 10th standard students. The grounds incorporated in the impugned order are not available in view of the specific directions given by this Court in earlier round of litigation. He would, therefore, urge to set aside the impugned order and issue directions to grant approval to the petitioner's appointment, who is working since last ten years.

5. Mrs. Ghanekar, learned AGP appearing for respondent nos.1 and 2, relying upon the contents of the affidavit-in-reply, vehemently submits that at the time of the petitioner's appointment there was ban on the recruitment in terms of the Government Resolution dated 02.05.2012. The policy was invoked with intention to absorb the surplus teachers. More than 12 surplus teachers were available in the subject of Marathi and History in the Latur district. About 9 teachers are available in the school to teach Marathi and History subject. Although, respondent-Management was having surplus teachers on their establishment in the year 2014-2015, still proceeded to appoint the petitioner contrary to the Government policy and provisions of

MEPS, Rules, 1981. She would, therefore support the impugned order.

6. Mr. Tele, learned Advocate appearing for respondent nos.3 and 4 points out that as per staff approval for 9th and 10th standard the petitioner has been appointed. Although there were surplus teachers for 6th to 8th and 1st to 5th divisions, no surplus teacher was available for 9th and 10th standards in the school. He would point out that in the year 2014-2015 there were 11 sanctioned posts of teachers for 9th and 10th standards. One of the teacher Mr. N. G. Sonale retired on 31.08.2014. The petitioner has been appointed against said vacancy. He would, therefore, submit that no fault can be found with the appointment of the petitioner and there is no difficulty for granting approval.

7. We have considered the submissions advanced on behalf of the learned Advocates appearing for the respective parties. We have perused the orders passed by this Court in earlier round of litigation. In Writ Petition No.4207/2017 filed by the petitioner assailing order dated 28.02.2017 passed by Education officer, this Court had specifically directed to reconsider the proposal without influenced by earlier rejection and proposal shall not be rejected for the same reasons.

8. Perusal of the order dated 28.02.2017 which was subject matter of challenge in earlier Writ Petition, shows that the proposal seeking approval to the petitioner's appointment was rejected giving reasons that the surplus teachers are available and there was ban on recruitment under Government Resolution dated 02.05.2012. As such, in light of the order dated 25.09.2017 passed by this Court in Writ Petition No.4207/2017, it was not open for the Education Officer to again employ selfsame grounds while

considering the proposal. The impugned order dated 25.06.2020 passed by the Education Officer simply records that there are 9 surplus teachers in the School owing to reduction in posts of the approved teachers. As such, there is no vacancy to accommodate the petitioner and grant approval to her appointment. Apparently, the reasons adopted by the Education Officer in the impugned order are in conflict with the directions given by this Court in the earlier round of litigation. The issue as regards to the surplus teachers could not have been again raised while considering the proposal of the petitioner in light of the specific directions given by this Court in the order dated 25.09.2019 passed in Writ Petition No.4207/2017.

9. Even otherwise if we look to the factual aspects of the matter, the petitioner's appointment is dated 23.09.2014. The staff approval for the year 2013-2014 would show that 11 posts of teacher were sanctioned for 9th and 10th standards. The appointment of the petitioner fits within the sanctioned number of teachers as per staffing pattern. The availability of the surplus teachers in the primary section i.e. 1st to 5th or secondary section i.e. 6th to 8th could not have been considered as impediment for grant of approval to the appointment of the petitioner. The petitioner is discharging her duties for almost 10 years from the date of her appointment. She belongs to OBC category. The ban on the recruitment under the Government Resolution dated 02.05.2012 would not apply, when the recruitment is made against reserved post. The ground of availability of surplus teachers was not available in view of the previous directions given by this Court or even on proper appreciation of the factual position, such ground could have been employed. Unfortunately petitioner is made to run from pillar to post and approach this Court seeking correction of

repeated wrongs done by the Education Officer. In spite of clear directions given by this Court, the proposal for approval to the appointment of the petitioner is rejected for selfsame reasons. We find that the Education Officer has not only ignored the clear directions given by this Court in earlier round of litigation, but also the settled legal position and consequently, the petitioner was required to fight out rounds of litigation before this Court. Resultantly, we proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 25.06.2020 passed by respondent no.2-Education Officer (Secondary), Zilla Parishad, Nanded is hereby quashed and set aside.
- c. The respondent no.2-Education Officer shall forthwith grant approval to the appointment of the petitioner, initially as Shikshan Sevak and then continuation as an Assistant Teacher and grant consequential benefits as permissible in law .
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE