



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

WRIT PETITION NO. 7397 OF 2022

Bhima s/o Bhaskar Dighe,
Age : 36 Years, Occu. : Service,
R/o Satewadi, Tq. Akole,
Dist. Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Secondary School Education
Department, Mantralaya,
Mumbai – 32.
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Adarsh Mahila Vikas Sanstha,
Maldad Road, Sangamner,
Tq. Sangamner, Dist. Ahmednagar,
Through its President. .. Respondents

Shri S. T. Shelke, Advocate for the Petitioner.
Mrs. Kalplata B. Patil Bharaswadkar, A.G.P. for the Respondent
Nos. 1 and 2.
Shri Shriniwas S. Wagh, Advocate for the Respondent No. 3.

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

**Closed for Judgment on : 13.06.2024
Judgment Pronounced on: 19.06.2024**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent

of parties heard both sides finally.

2. Petitioner who is a teacher rendering services with unaided secondary school run by the respondent No. 3, is taking exception to the order dated 16.02.2022 passed by the respondent No. 2/Education Officer (Secondary), Zilla Parishad, Ahmednagar, refusing to grant approval to his appointment. The proposal was refused on the ground that online procedure for appointment contemplated by the Government Resolution dated 23.06.2017 has not been followed and there is prohibition to grant approval as per the Government Resolution dated 04.05.2020.

3. Learned counsel for the petitioner submits that petitioner belongs to scheduled tribe and holds validity certificate. He was appointed after following due procedure of law. The school in question is located in hilly area at Padoshi, Tq. Akole, Dist. Ahmednagar. Learned counsel would vehemently refer to notification dated 09.06.2014, by which special privilege has been conferred on the local scheduled tribe candidate for the appointment in the school situated in the scheduled area.

4. Learned counsel for the petitioner would submit that Government Resolutions referred in the impugned order cannot be made applicable. The online process of recruitment through Pavitra Portal has not been in force. The appointment of the petitioner is in the scheduled area and, therefore, procedure contemplated by ordinary government resolutions cannot be

made applicable.

5. Per contra, learned Assistant Government Pleader opposes the submissions of the petitioner. She seeks to rely on the affidavit in reply to point out that due procedure was not followed as contemplated by the Government Resolutions referred to in the impugned order. She further seeks to rely on judgments rendered in the matter of **Late Annasaheb Tandale Shikshan Prasarak Mandal and others Vs. The State of Maharashtra and another in Writ Petition No. 9924 of 2021** and Pravin Bodhu Kasbe Vs. State of Maharashtra and others reported in *2021 DGLS(Bom.) 1122* delivered by the coordinate Benches of this Court.

6. Having considered rival submissions of the parties, we find that petitioner belongs to Koli Mahadev (Scheduled Tribe) and holds tribe validity certificate issued by the competent authority. There was permanent vacancy in the school run by the respondent No. 3, which is located at Padoshi, a hilly area of Taluka Akole, Dist. Ahmednagar. A certificate issued on 09.12.2013 by Project Officer Integrated Tribal Development Project Rajur, Tq. Akole, Dist. Ahmednagar indicates that Padoshi, Tq. Akole is included in the scheduled area.

7. Before appointing petitioner, application was submitted on 04.03.2019 soliciting permission for the recruitment from the respondent No. 3/Education Officer. An acknowledgment of the office of the Education Department (Secondary), Zilla Parishad,

Ahmednagar shows that it was received by it.

8. We further find that advertisement was published in a news paper namely Daily Yuvawarta on 15.03.2019 convening interviews on 31.03.2019. In response to the advertisement, petitioner was selected and appointed vide order dated 01.04.2019. Thereafter his proposal was forwarded to the respondent No. 2/Education Officer seeking approval.

9. The respondent No. 3/management has made an endeavour to solicit prior permission of the Education Officer before appointing petitioner. There is no response from the Education Department. Neither it is the stand of the respondents that surplus teachers were available and referable to the school for being accommodated. Advertisement was issued prior to 15 days preceding the selection of the petitioner. As per the reservation, the petitioner was found eligible and was appointed. We find that there is compliance to Rule 9(2)(A) and 2(B) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 (hereafter referred as to the 'Rules of 1981' for the sake of brevity and convenience). It is not requirement of Rule 9 that advertisement should be given in atleast two news papers, which is sought to be contended by the learned A. G. P. in the affidavit in reply.

10. Though Government Resolutions dated 23.06.2017 and 07.02.2019 were issued providing online Pavitra Portal system for recruitment, Pavitra Portal system has not been put to

desired use. We have taken a view by passing **order dated 10.06.2024 in Writ Petition No. 13150 of 2022 in the matter of Shaikh Jaweria Khadarsab Vs. The State of Maharashtra and others** that approval cannot be refused on the ground that process through Pavitra Portal was not followed. We reiterate relevant paragraphs as follows :

“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 the Government Resolution dated 23.06.2017 was passed.

7. In the light of above, in our considered view it would be appropriate that the respondent/Education Officer (Secondary) is directed to consider the petitioner's case for grant of approval on its own merits, ignoring the fact that it was not in accordance with or through the process of Pavitra Portal in the light of Government Resolution dated 23.06.2017.

11. We would prefer to follow our view taken in the above matter. Undisputedly, the village where the school is located is included in the scheduled area. Notification was issued by the State Government on 09.06.2014 stipulating that certain posts in the scheduled area would be reserved for the local candidates of the scheduled tribes. Petitioner belongs to the scheduled tribe. A post of teacher in the school in question can be said to be earmarked for the local candidate like petitioner. In view of the said privilege conferred by the notification, the management is justified in appointing the petitioner. Government Resolutions dated 23.06.2017 and 07.02.2019 do not contemplate any procedure required to be undertaken for scheduled area and for local candidate belonging to scheduled tribe. This aspect of the matter has also not been dealt with by the respondent No. 3/Education Officer.

12. We have also gone through the judgment in the matter of **Pravin Bodhu Kasbe Vs. State of Maharashtra and others** (supra) and the guidelines issued by the coordinate Bench in paragraph No. 10. Facts of the present case are distinguishable from the facts in the reported judgment. We have recorded that there is no requirement of Rule 9(2) of the Rules of 1981 to publish advertisement in two local news papers. We have also held that there is compliance of provision of Rule 9(2)(A) and 9(2)(B) of the Rules of 1981. We prefer to follow view taken in the matter of **Shaikh Jaweria Khadarsab Vs. The State of Maharashtra and others** (supra). Similarly, view taken by coordinate Division Bench of this Court in the matter of **Late Annasaheb**

Tandale Shikshan Prasarak Mandal and others Vs. The State of Maharashtra and another (supra) is distinguishable. Both the judgments cited by the learned A. G. P. may not enure to her benefit.

13. For the reasons stated above, we pass following order.

O R D E R

- I. Writ petition is partly allowed.
- II. Impugned order dated 16.02.2022 passed by the respondent No. 2/Education Officer (Secondary), Zilla Parishad, Ahmednagar is quashed and set aside.
- III. The respondent No. 2/Education Officer shall reconsider proposal of the petitioner for grant of approval afresh and decide the same on its own merits within a period of six (06) weeks from the date of presentation of copy of this order, however, shall not reject the same on the grounds cited in the impugned order.
- IV. Rule is made absolute in above terms.
- V. There shall be no order as to costs.

[**SHAILESH P. BRAHME, J.**] [**MANGESH S. PATIL, J.**]

bsb/June 24