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wp 7662.21 (1).odt

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

WRIT PETITION NO. 7662 OF 2021

Geetanjali d/o. Pandurang Mule,
Age 32 years, Occ. Service,
at present acting as Assistant Teachers
in Zakir Hussain Marathi Primary School,
Kolhenagar, Latur.

.. Petitioner.

VERSUS

1. The State of Maharashtra
through the Secretary,
Department of School Education and Sports,
Mantralaya, Mumbai.
2. The Director of Education,
Education Department (Secretary)
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur..
4. The Education Officer (Primary),
Zilla Parishad, Latur,
Tq. And Dist. Latur.
5. The Head Master,
Dr. Zakir Hussain Marathi Primary School,
Gauspura, Kolhe Nagar, Latur 431 512.
6. The Secretary /President,
Rashtrajagrati Bahuuddeshiya Vikas Sanstha, Latur,
Latur.

.. Respondents.

M. V.S. Panpatte, and Mrs. P.S. Gondhalekar, Advocate for petitioner
Mr. S.K. Shirse, AGP for respondent Nos. 1 to 3.

Mr. V.C. Patil, Advocate h/f. Mr. U.B. Bondar, Advocate for respondent No.4

Mr. C.V. Dharurkar, Advocate for respondent Nos. 5 and 6.

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

**RESERVED ON : 28.3.2024.
PRONOUNCED ON : 10.4.2024.**

JUDGMENT [PER S.G. CHAPALGAONKAR, J] :-

1. The petitioners impugn the order dated 5.3. 2021 passed by the Education Officer (Primary) Zilla Parishad, Latur, thereby declining to grant approval to the appointment of the petitioner as Assistant Teacher with respondent No.5 school.

2. Mr. V.S. Panpatte, the learned advocate for the petitioner submits that the respondent No.6 runs the respondent No.5 school which is receiving grant in aid from the State Government. On 26.10.2013, Mr. Ravikumar V. Badgire working as Assistant Teacher with respondent No.5 school died in an unfortunate incident. The respondent No.6 management issued advertisement to fill up the vacancy. The petitioner responded to the said advertisement, she being qualified and meritorious candidate, came to be appointed as Assistant Teacher against the clear vacancy in respondent No.5 school. The proposal for grant of approval to the petitioner's appointment was forwarded to the Education Officer. However, the Education Officer vide order dated 9.3.2017, declined to grant approval giving reason that the surplus teachers are available for filling up the vacancies in Latur District. Hence, approval can not be

granted to the appointment of the petitioner. The petitioner had assailed the order of Education Officer before this Court in W.P. No. 14901 of 2017. This Court, after considering the rival submissions observed that the institution being a minority institution, it cannot be compelled to absorb surplus candidates. Therefore, the rejection of the proposal on such ground is improper. This Court disposed of the writ petition, with direction to the Education Officer to re-consider the proposal seeking approval to the appointment of the petitioner afresh with rider that it shall not be rejected on the ground that surplus candidates were available.

3. In spite of specific direction of this Court, the Education Officer, vide his order dated 13.9.2018, again rejected the proposal by giving reason of availability of surplus teaches in Latur District. The petitioner again approached this Court by filing W.P. No. 7606 of 2019, which came to be allowed vide order dated 11.12.2019. This court quashed and set aside the impugned order dated 13.9.2018 and disposed petition directing education officer to decide the petitioner's proposal after granting opportunity of hearing to all concerned. Lastly, the Education Officer rejected the proposal vide impugned order dated 5.3.2021 on the ground that no vacancy of Assistant Teacher is available and the petitioner has not cleared TET qualification, which is brought in vogue since 2.6.2013.

4. Mr. Panpatte, the learned advocate for petitioner would submit that the Education Officer was required to consider the position as on the date of the petitioner's appointment. Further, the issue as regards the applicability of TET qualification for appointment of teachers in minority aided or un-aided institutions is subject matter before the

Supreme Court of India. In that view of the matter, conditional approval could have been granted to the petitioner.

5. Mr. S.K. Shirse, learned AGP appearing for respondent Nos. 1 to 3 and Mr. V.C. Patil, with Mr. U.B. Bondar, learned advocate appearing for respondent No.4 submit that the Government Resolution dated 13.2.2013 speaks about the requirement of TET qualification for appointment of Assistant Teachers. The petitioner's appointment is made de-hors the condition of TET qualification. The management had not obtained prior permission from the Education Department to advertise the vacancy. At the relevant time, there were 3 excess teachers. Instead of absorbing those teachers, the management appointed the petitioner by flouting the prescribed procedure. Although the institution is a minority institution, it is bound by the prescribed rules. The appointment made de-hors the procedure prescribed can not be approved.

6. We have considered the submissions advanced by learned advocates for respective parties. Apparently, the appointment of the petitioner is made against a vacancy occurred on death of Mr. Ravikumar Badgire, who was working as Assistant Teacher with respondent No.5 school. The proposal for approval to the appointment of the petitioner was rejected by the Education Officer merely on the ground that the procedure under Section 5(1) of MEPS Regulation Act, 1977 was not followed and there are number of surplus teachers waiting for absorption. This Court in W.P. No. 14901 of 2017 quashed and set aside the order of the Education Officer and directed him to reconsider the proposal, with a specific stipulation that the proposal shall not be rejected on the ground of availability of surplus teachers for absorption.

Unfortunately, giving a similar reason, the Education Officer rejected the approval vide order dated 13.9.2018, which was again subjected to challenge in W.P. No. 7606 of 2019. In that proceeding, Education Officer appeared in person and tendered unconditional apology and assured this Court that he shall reconsider the proposal in tune with the directions given in earlier round. Unfortunately, vide the impugned order dated 1.3.2021, the petitioner's proposal is again rejected giving two reasons. Firstly, there is no vacancy at present and the petitioner does not comply with the TET qualification in terms of Government Resolution dated 13.2.1993. It is not in dispute that respondent Nos. 5 and 6 are minority institutions. The question, as to whether the TET qualification is compulsory for the appointment of teachers in minority institutions, is now subject matter of consideration before the Supreme Court of India, *in the matter of Director of School Education, Chennai and another vs. B. Annie Packinarani Bai and another Special Leave Petition (Civil) Diary No. 17702 of 2021.*

7. In such contingency, this Court has issued directions to grant conditional approval to the teachers subject to the outcome of the pending issue before the Supreme court of India. The second ground employed for rejection of the proposal for approval is non availability of vacancy. We find that said ground is vague and ambiguous. The Education Officer ought to have dealt with the position of vacancy as on the date of appointment of the petitioner. As observed above, the petitioner is appointed against the vacancy occurred on account of death of Mr. Ravikumar Badgire, Assistant Teacher working with respondent No.6 school. Consequently, the appointment of the petitioner appears to have been made against the vacancy that arose with the respondent No.5

school. The reply filed by the Education Officer or the text of the impugned order, nowhere depicts that at the time of petitioner's appointment, no post was vacant with respondent No.5 school. On the other hand, the impugned order appears to have been passed considering the present position in the school. The petitioner is litigating since last 11 years, seeking approval to her appointment and this is the third round of litigation. We are, therefore, of the considered opinion that this is a fit case to exercise our jurisdiction under Article 226 of the Constitution of India and direct the Education Officer to grant conditional approval to the appointment of the petitioner considering the position, as on the date of her appointment, subject to condition that she furnishes an undertaking that in case the Supreme Court decides mandating requirement of TET qualification, the petitioner shall not claim any equities and shall be bound by such decision in the matter of her appointment. We, therefore, proceed to pass the following order :-

ORDER

- [I] Writ petition is partly allowed;
- [ii] The Impugned order dated 5.3.2021 passed by the Respondent No.4 - Education Officer, Primary, Zilla Parishad, Latur, is hereby quashed and set aside. Respondent No.4 shall grant conditional approval to the appointment of the petitioner as Assistant Teacher subject to conditions as under :-
 - [a] The petitioner shall tender an undertaking that, she would abide by the conclusions that would be drawn by the Hon'ble Supreme Court, and if the verdict is adverse to those teachers who do not have the TET qualification or have cleared the TET after 31.03.2019, or as the case may be, she would abide by the same without raising any cause of action.

[b] Let such affidavit undertaking be filed in this Court within 15 days from today and a copy be tendered to the concerned Education Officer within the same timeline.

[c] If an adverse order is passed by the Hon'ble Supreme Court by which the teachers are covered by clause (a), the State Government would not recover the salaries already paid/earned by performing duties.

[d] In the event, the candidates like the Petitioner are protected by the Hon'ble Supreme Court's conclusions and she is held to be qualified to continue in employment, then only she would be entitled for all service benefits like promotions, increments, etc.

[iii] Writ petition is disposed of in above terms.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-