



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11077 OF 2019

Vijaykumar S/o Sonyabapu Salunke,
Age-30 years, Occu:Service as
"Assistant Teacher",
R/o-Sailu, Taluka-Sailu,
District-Parbhani

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Principal Secretary,
Department of School Education,
Mantralaya, Mumbai-32,
- 2) Education Officer (Primary),
Zilla Parishad, Parbhani,
- 3) Head Master,
Marathwada Shikshan Prasarak Mandal's
Primary School at Sailu,
Taluka-Sailu, District-Parbhani,
- 4) Secretary,
Marathwada Shikshan Prasarak Mandal,
Deogiri College Campus, Station Road,
Aurangabad, Taluka and District-Aurangabad.

...RESPONDENTS

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Mr. P.P. More Advocate h/f. Mr. A.B. Tele Advocate for
Petitioner.
Mr. V.M. Jaware, A.G.P. for Respondent No.1.
Mr. M.P. Kale Advocate h/f. Mr. B.A. Shinde Advocate for
Respondent No.2.
Mr. A.G. Choudahri Advocate for Respondent Nos. 3 and 4.

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

DATE OF RESERVING JUDGMENT : 20th FEBRUARY 2024

DATE OF PRONOUNCING JUDGMENT : 26th FEBRUARY 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. The petitioner challenges impugned order dated 19th October 2018 passed by respondent No.2 rejecting the approval for his appointment as 'Shikshan Sevak' and prays that he be granted approval in the said cadre for the period from 23rd October 2012 to 22nd October 2015 and as assistant teacher from 23rd October 2015 on-wards with consequential reliefs.

3. The petitioner came to be appointed on the post of Shikshan Sevak by respondent No.4 institution in respondent No.3 school. The petitioner's educational qualification is H.S.C. D.Ed. His appointment was as per the procedure and after the completion of the period of three years, he states that he is

eligible to be appointed on the post of assistant teacher. The proposal for grant of approval to his appointment was submitted on 30th October 2012 to respondent No.2, however it was returned to respondent No.4 institution, stating that there was ban on the recruitment. Thereafter till 17th September 2016 neither the said proposal for grant of approval to his appointment was considered nor surplus candidate was sent on the post held by the petitioner. For the first time on 17th September 2016, one surplus candidate by name, Gulabchand Sattoji Rajbhoj was sent by respondent No.2 for absorption, but respondent No.4 institution took a stand that as large number of teachers were rendered surplus on the establishment of various schools run by respondent No.4 itself, absorption of other candidate was not possible. As the request of the petitioner for grant of approval to the appointment was not considered and absorption of surplus candidate was insisted on the post held by the petitioner, he approached this Court by filing Writ Petition No. 3710 of 2017. The said Writ Petition came to be decided on 5th July 2018 with directions to the Education Officer to decide the proposal for grant of approval to the appointment of the petitioner afresh within four months from the date of the order. The decision was not taken by the Education Officer within four

months and therefore the petitioner filed Contempt Petition No.187 of 2019. Thereafter his claim for approval to the appointment came to be rejected by the Education Officer on 19th October 2018, which is the impugned communication. His proposal has been turned down on the ground that there was ban on the recruitment in view of the Government Resolution dated 2nd May 2012. It is the contention of the petitioner that the said Government Resolution itself has been modified by the Government in subsequent Resolutions. Under the said circumstance, since the petitioner is in service since 23rd October 2012, his service needs to be approved and he should be paid salary accordingly.

4. Heard learned Advocate Mr. More holding for Advocate Mr. Tele for the petitioner, learned AGP Mr. Jaware for respondent No.1, learned Advocate Mr. Kale holding for Advocate Mr. Shinde for respondent No.2 and learned Advocate Mr. Choudhari for respondent Nos. 3 and 4.

5. Learned Advocate Mr. More appearing for the petitioner took us through the documents annexed to the Petition. He has pointed out that by communication dated 24th September 2012

permission was sought by respondent No.4 institution to fill up the post which was to become vacant from 16th October 2012. Thereafter an advertisement was published in the newspaper and the petitioner came to be appointed by order dated 23rd October 2012. Learned Advocate for the petitioner is also relying upon the staff sanction orders for the academic year 2014-2015 to 2016-2017 to show that the post held by the petitioner is admissible and eligible for payment of grants. He further submits that this Court in ***Public Interest Litigation No.197 of 2013 (Ramnath Dada Mote vs. the State of Maharashtra and others)***, at Principal Seat, by order dated 22nd January 2014 gave directions to the State Government to issue necessary instructions to commence the recruitment process for filling in vacant posts of teachers in Secondary schools, Higher Secondary schools and Junior colleges in the State of Maharashtra. Further in ***Writ Petition No.837 of 2018 (Shubhangi D/o Bhagwat Chate and others vs. the State of Maharashtra and others)***, decided by this Court on 13th April 2018, it was held that in earlier decisions also this Court has come to the conclusion that the ban on recruitment in Government Resolution dated 2nd May 2012 does not apply to fill up the posts from reserved category candidates. Learned Advocate also relies on subsequent Government

Resolutions dated 13th March 2018 and 7th February 2019, wherein the exemption from the ban on recruitment was considered. So also the learned Advocate for the petitioner relies on the decision in *Writ Petition No.1935 of 2017 (Dnyaneshwar s/o Dattrao More vs. the State of Maharashtra and others)*, dated 10th July 2019, wherein it was held that for about 18 months there was no reply by the Education Officer to the communication seeking permission to appoint teachers given by the institution and in that circumstance when the petitioners therein came to be appointed, it was not considered as without following due procedure. Learned Advocate for the petitioner, therefore, submitted that when the Government itself is changing its policy, the objection to the approval ought not to have been taken.

6. An affidavit of Umesh Kisanrao Raut, who was the In-charge Deputy Education Officer (Primary) has been filed on behalf of respondent No.2, wherein he has also reiterated the facts but he has submitted that after the order was passed by this Court in the earlier Writ Petition bearing No.3710 of 2017 filed by the present petitioner himself, the proposal was submitted by the institution on 11th July 2018 and thereafter the

impugned order has been passed. It was found that the appointment of the petitioner was not legal as there was ban on the recruitment in view of the Government Resolution dated 2nd May 2012. Though the Government has relaxed the said ban in respect of the appointments in reserved category, so also in respect of the teachers teaching the special subjects like Mathematics, Science and English, the case of the petitioner does not fall within the said category. The petitioner is from the open category and his appointment is for teaching all the subjects and therefore, approval to his appointment cannot be granted.

7. We have considered all the documents carefully. Though there is an application by respondent No.4 institution to the Education Officer on 24th September 2012 seeking permission to fill up the post, details of the said post are not stated in the said application. No doubt, it is stated that a post is going to become vacant since 16th October 2012, which should be allowed to be filled up and therefore, latitude is required to be given to the said letter by inferring that it is in respect of the post held by the petitioner. The petitioner has not produced on record the staff sanction order for the academic year 2012-2013. It has been

produced for the academic year 2014-2015 on-wards. It is to be noted that in the present case, respondent Nos.3 and 4 have not filed affidavit in reply and have not produced on record the documents which they had forwarded along with the proposal. The petitioner is not the natural custodian or supposed to be possessing those documents and therefore, it is not expected that he should produce each and every document. The copy of the entire bunch of the documents which was received by respondent No.2 has not been produced by the petitioner and the rejection of the proposal for approval is not on the ground that there was no post available. Rejection is on the basis of ban on the recruitment as per Government Resolution dated 2nd May 2012, especially Condition No.1.8, which reads thus:-

“ (1.8) अतिरिक्त ठरलेले शिक्षक 100% समायोजित झाल्याशिवाय खाजगी किंवा स्थानिक स्वराज्य संस्थांच्या शाळांमध्ये नविन शिक्षक व शिक्षकेतर कर्मचा-यांची भरती करू नये. ”

8. It is to be noted that when the proposal was sent for the first time in respect of the petitioner's appointment on 30th October 2012, the Education Officer, by his letter dated 5th March 2013, had returned the said proposal to respondent No.4 institution. It was not rejected. Respondent Nos. 1 and 2 have

not come with the case that when it was communicated by letter dated 24th September 2012 to the Education Officer that a post is going to become vacant, then the Education Officer has taken the steps to supply the surplus teacher. The contention of the petitioner that till 17th September 2016 and then after 22nd August 2017 there was no attempt by the Education Officer to send the surplus teacher on the post held by the petitioner. Education institution is not supposed to keep the posts of teachers vacant for long time. Ultimately the teachers would be required to teach the students and with the scarcity of the teachers, it would be difficult for the institution to manage the school and it would be burden for the other teachers to conduct the classes. The Government is also duty bound to give sanction to the requisite posts as per the policy and it would be the equal duty of the appropriate authorities to decide the applications submitted by the educational institutions for filling up the posts. The concerned officers are not supposed to sit over the files for months or years together.

9. The present petitioner came to be appointed from open category and he was not appointed to teach a particular subject. No doubt, this Court, in other matters, has taken a view that the

said ban as per the Government Resolution dated 2nd May 2012 is not applicable to the teachers appointed from the reserved category, so also to the teachers appointed to teach special subjects like Mathematics, Science and English. But the present case is different. Here it can be reiterated that respondent Nos. 3 and 4 appears to have followed the due procedure before appointing the petitioner. A due application was given on 24th September 2012 informing the proposed vacancy but it was not responded by the Education Officer, whose duty it was, to see as to whether there are surplus teachers and to absorb them in the vacant posts. If the concerned officer has not acted swiftly then respondent Nos. 3 and 4 cannot be said to be held responsible. Petitioner being the outsider i.e. the person who was not concerned with the procedure, cannot be blamed for any reason as he was not at fault. The petitioner submitted to the procedure after he noticed the advertisement and through the proper recruitment process he has been appointed. There was absolutely no suppression by respondent Nos. 3 and 4 as well as by the petitioner in respect of the recruitment of the petitioner. In his affidavit, respondent No.2 has not clarified, as to why there was no response to the letter dated 24th September 2012 by his office. The observations from the decision in *Writ Petition*

No.1935 of 2017 (supra) would be applicable to the petitioner. We, therefore, hold that since the procedure has been properly followed and complied with, it cannot be said the petitioner's appointment was illegal in view of the ban on recruitment. The impugned order dated 19th October 2018 passed by respondent No.2 is required to be quashed and set aside by allowing the Petition. Hence the following order:-

ORDER

(I) The Writ Petition is hereby allowed.

(II) The impugned order dated 19th October 2018 passed by respondent No.2 rejecting the approval for the appointment of the petitioner as Shikshan Sevak, is hereby quashed and set aside.

(III) The petitioner is entitled for the grant of approval to his appointment initially as Shikshan Sevak and thereafter as Assistant Teacher, as per the rules, within a period of one month from today. Respondent No.2 is directed to grant approval to such appointment of the petitioner.

(IV) The arrears of salary of the petitioner be paid to him within a period of six months from today and the regular salary be paid to him as and when it becomes due.

(V) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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