



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 WRIT PETITION NO.10710 OF 2022

Swati d/o Shahajirao Chate,
Age 37 yrs., Occ. Service as Assistant Teacher,
R/o Malegaon (Yatra), Tq. Loha,
Dist. Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
- 2 The Deputy Director of Education,
Latur Region, Latur.
- 3 The Education Officer (Secondary),
Zilla Parishad, Nanded,
Dist. Nanded.
- 4 Shri. Ramkrushna Maharaj Kendre Education
Society, Kandhar, Tq. Kandhar, Dist. Nanded.
(Registered Society)
Through its President/Secretary.
- 5 The Head Master,
Sanjay Gandhi Vidyalay,
Malegaon (Yatra), Tq. Loha,
Dist. Nanded.

... Respondents

...

Mr. V.H. Dighe, Advocate for petitioner

Mr. N.S. Tekale, AGP for respondent Nos.1 to 3

Mr. S.S. Wagh, Advocate for respondent Nos.4 and 5

...

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

DATE : 22th FEBRUARY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition has been filed for issuance of writ of mandamus directing respondent No.3 to grant approval to the appointment of the petitioner as Shikshan Sevak from the date of her appointment and to release the consequential monetary benefits by setting aside the impugned order/communication dated 25.08.2021 rejecting the said proposal.

2 The petitioner has come with a case that she has passed D.Ed. Course and thereafter completed B.A. in 2011 and B.Ed. in 2012. She is member of NT (D) category. Since she possesses the requisite qualification for being appointed as Shikshan Sevak/Assistant Teacher in the Secondary School, she started working with respondent No.5 since 2012. There was no appointment order in her favour initially; yet, she has signed the muster of the school regularly. Thus, she is in continuous service, as there was a vacant and sanctioned post as Assistant Teacher in 2015 and the necessary proposal was submitted with respondent No.3 in the year 2015 for grant of approval.

In fact, respondent No.4 Society runs four secondary schools in the district. One secondary school having 5th to 10th standards is on 100% grant-in-aid basis. In 2019 one post of Assistant Teacher became vacant due to death of Mr. V.V. Kendre and, therefore, following due procedure the Management appointed her as Shikshan Sevak by order dated 22.02.2019 for a period of three years. The Management had published advertisement in Daily Newspaper dated 17.02.2019. The petitioner and other candidates had participated selection process. After her appointment, proposal was submitted on 09.04.2019 for approval of her appointment. It came to be rejected on 18.12.2019. The said rejection is illegal and, therefore, the petitioner approached this Court by filing Writ Petition No.1102 of 2020. Respondent – Management filed affidavit in support of the petitioner. It was pointed out that the respondent has absorbed five surplus teachers and since she belongs to this reservation category and since she was working, the approval ought to have been granted. The said petition came to be partly allowed on 29.07.2021 directing the Education Officer to extend opportunity of hearing to the parties and to pass a reasoned order. The hearing has been given; yet, once again her proposal has been rejected on 25.08.2021. Hence, this petition.

AGP Mr. N.S. Tekale for respondent Nos.1 to 3 and learned Advocate Mr. S.S. Wagh for respondent Nos.4 and 5. In order to cut short, it can be said that they have argued in support of their respective contentions.

4 Respondent Nos.4 and 5 relied on the affidavit of one Bhanudas Baburao Kendre, Joint Secretary of respondent No.4 institution, who has reiterated that the petitioner came to be appointed in the year 2019 in place of vacant post due to death of Mr. V.V. Kendre. The institution has absorbed five surplus teachers and the appointment of the petitioner is as per rules. According to them, petitioner is entitled to get the benefit of Government Resolution dated 24.08.2018. Though the appointment of the petitioner is after Government Resolution dated 23.06.2017 i.e. Pavitra Portal; yet, the said Portal was not activated on the date of appointment of the petitioner.

5 Baliram Irrana Yerpulwar, Superintendent Class-II, office of the Education Officer (Secondary), Zilla Parishad, Nanded has filed affidavit on behalf of respondent No.3 supporting the decision taken by respondent No.3 when respondent No.3 was directed to decide the matter afresh on its own merits. He had found the deficiencies in the appointment of the petitioner and, therefore, submits that approval could not have been accorded.

6 The first and the foremost fact that is required to be taken note

of is, neither the petitioner nor respondent Nos.4 and 5 have produced on record any communication made by respondent Nos.4 and 5 to the Education Officer seeking permission to fill the vacant post. Though the petitioner is coming with a case that she started working with respondent No.5 School since 2012, she does not say that even at that time the procedure was adhered to i.e. permission was sought by the institution to fill up the vacant post. She has also not stated as to how the post was vacant, what was the position, as to whether the post was available from open category or from reservation category and when she had undergone the process of interview etc.. Further, on the contrary, she says that she came to be appointed on a vacant and sanctioned post in 2015. That means, she does not want to rely upon the statement that she came to be appointed in 2012. If she would have been appointed in 2012, there was no question of appointing her once again in 2015. Again on the third occasion she says that one post of Assistant Teacher became vacant due to death of Mr. V.V. Kendre in 2019 and the Management had then published advertisement in Daily Newspaper and then selected her. The Management has not produced on record the copy of the advertisement and the permission taken prior to the advertisement to fill up the vacant post. When this Court had directed in the earlier writ petition to the Education Officer (Secondary), Zilla Parishad, Nanded to give hearing to all the persons concerned and he has given the hearing and had recorded the

statement on behalf of respondent Nos.4 and 5, it was stated by one Bhagwan Shankarrao Munde on behalf of respondent Nos.4 and 5 that on the death of Mr. V.V. Kendre, who was teaching Marathi, History and Geography, taking into consideration the future of the students the petitioner came to be appointed. He does not say that procedure was adhered to. If the procedure has not been adhered to while appointing a Teacher, then protection cannot be granted to a person who came to be appointed without adhering to the procedure i.e. precisely the reason that has been given. Further, Bindu Namawali/roaster was not produced along with the proposal. Even if we keep the point aside that though the Government Resolution regarding Pavitra Pranali was issued by the Government; yet, the said Portal was not active. Yet, for the aforesaid reasons, in view of the fact that the procedure has not been adhered to while appointing the petitioner, the Education Officer (Secondary) was justified in refusing to grant the approval. We are, therefore, of the opinion that constitutional powers of this Court cannot be exercised in such cases. The writ petition, therefore, deserves to be dismissed. Accordingly, the writ petition stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)