



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

Writ Petition No. 9163 / 2021

Avinash s/o Marotirao Kamble,
Age : 26 years, Occu. Service as Shikshan Sevak.
R/o Ravankola, Tq. Mukhed,
Dist. Nanded.

...Petitioner

Versus

1. State of Maharashtra
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded.
4. The Superintendent,
Pay and Provident Fund Unit,
(Primary), Nanded.
5. Shri. Saibaba Shikshan Prasarak Mandal,
Ravankola, Tq. Mukhed, Dist. Nanded,
Through its President/ Secretary.
6. Saraswati Primary School,
Ravankola, Tq. Mukhed, Dist. Nanded,
Through its Head Master.

..Respondents

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Advocate for the Petitioner : Mr. V.S. Panpatte

A.G.P. for Respondents/State : Mr. R.S. Wani

Advocate for Respondent No.3 : Mr. S. B. Pulkundwar

Advocate for Respondent No.5 and 6 : Mr. B.P. Gonare

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

RESERVED ON : 13 JUNE 2024

PRONOUNCED ON : 21 JUNE 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. Petitioner is a Shikshan Sevak whose proposal for approval for his appointment has been turned down by the respondent no.3/Education Officer by impugned order passed on 03.05.2021 on the ground that procedure contemplated by the Government Resolution dated 23.07.2018 through Pavitra Portal has not been followed.

3. Petitioner claims to be belonging to scheduled caste *Mang.* He was having requisite qualification for a post of teacher. A vacancy was created because of superannuation of one of the teachers on 31.07.2021 in the respondent no.6/school.

Respondent/Management intimated the vacancy to the Education Department and solicited permission for recruitment on 31.12.2020, 28.01.2021, 31.01.2021. Having received no response to there communications, advertisement was published on 31.01.2021 in daily newspaper Dainik Mahasagar. Petitioner appeared for interview on 07.02.2021. He was selected and appointed by order dated 11.02.2021. Thereafter proposal was forwarded which met with rejection by the impugned order.

4. Learned Counsel for the petitioner submits that appointment of the petitioner was against a reserved category post and it was made by following due procedure of law. He submits that Pavitra Portal has not been enforced for various reasons. There are orders passed by the High Court and the orders of approvals disclosing non-enforcement of Pavitra Portal. He relies on judgment passed in the matters of **Rajan Sahadeo Ratul and Others Vs. State of Maharashtra and Others** 2023 (6) Mh.L.J. 234; **Lalit Sureshrao Shinde Vs. State of Maharashtra and Others**, Writ Petition No.14420/2021.

5. It is further submitted by learned Counsel that the Education Department was intimated about the vacancy and permission was also solicited but no response was received. An

advertisement was published in a local newspaper. Thereafter the petitioner was appointed against a vacancy of reserved category. He would further submit that ban imposed by Government Resolution dated 02.05.2012 was not attracted to the appointment to fill up the backlog. A reliance is placed on the judgment in the matter of **Sou. Revati Kusha Wagh & Anr. Vs. State of Maharashtra and Anr.**, Writ Petition No.10580/2015 with connected matters. Learned Counsel for the petitioner further refers to letter dated 17.08.2023 issued by Public Information Officer of Education Commissioner at Pune. It is further submitted that amendment to Section 9 of Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rules, 1981 (hereinafter referred to as 'Rules' for the sake of brevity), is bad in law and compliance with Rules 9(2A) and 9(2B) is not necessary. He relies on the judgment of **Dnyan Vikas Mandal Vs. Parashram s/o Laxman Lokhande and Others**, 1991 (1) Mh.L.J. 830.

6. Respondent No.5 and 6 are management and the school respectively and they support the petitioner.

7. Learned AGP vehemently opposes the petition on the basis of affidavit-in-reply. He would submit that it was necessary for

the respondent/management to undertake recruitment through Pavitra Portal only. Due procedure of law has not been followed while appointing the petitioner and there is breach of Section 5 of the Act and Rules 8 and 9 of the Rules. There were 21 surplus teachers from scheduled caste category and in all 133 teachers from other categories were available in the district and bypassing them, the appointment of the petitioner has been made. As the statutory procedure has not been followed, reliance is placed on judgment of Supreme Court in the matter of **Competent Authority Vs. Barangore Jute Factory and Ors.**, 2005(9) SCALE493.

8. It is submitted that management did not request for referring surplus teachers. He would further submit that there is breach of mandatory provisions of Sub-Rules 2A, 2B and 2D of Rule 9. He relies on the judgment of **Pravin Bodhu Kasbe Vs. State of Maharashtra and Others**, Writ Petition No.3142/2020 and **Late Annasaheb Tandale Shikshan and Others Vs. State of Maharashtra and Anr.**, Writ Petition No.9924/2021.

9. Having considered rival submissions of the parties and the affidavit-in-reply, it emerges that petitioner belongs to scheduled caste category and holds caste validity certificate. Before making

appointment on 31.12.2020, intimation-cum-application was submitted by the management to the Education Department. It appears to have been received by the office of the respondent no.3 as there is an acknowledgment. Further, application dated 21.01.2021 was made intimating the respondent no.3 about the retirement and creation of the vacancy in the school. It also bears acknowledgment of the office of the respondent no.3. No response was given to both the applications. For the first time in the affidavit-in-reply, it is contended by the respondent no.3 that number of surplus teachers were available.

10. Petitioner was appointed on 12.02.2021 on the post reserved for scheduled caste. He was a qualified teacher. Alongwith proposal, relevant documents were forwarded to the Education Officer. Respondent No.3/Education Officer only cited a reason that there was no adherence to the recruitment procedure through Pavitra Portal. There is no objective assessment of the proposal.

11. Though learned Counsel for the petitioner has argued and orally challenged validity of amended provisions of Rule 9, in the absence of challenge in the petition, we cannot and refuse to consider those submissions.

12. For the recruitment through Pavitra Portal, Government Resolution dated 23.06.2017 was issued and thereafter on 20.06.2018 and 07.02.2019, further resolutions were issued. There are various decisions of co-ordinate benches of Bombay High Court. Petitioner has also cited judgment in the matter of Lalit Sureshrao Shinde (supra) to buttress that an incumbent is held to be entitled to receive approval, though his appointment is not as per Pavitra Portal. We have considered the orders issued by Education Officers granting approval, though appointments were not made through Pavitra Portal. Taking stock of the situation, we have also taken a view that pavitra portal has not been put to the desired use, in the matter of Shaikh Jaweria Khadarsab Vs. the State of Maharashtra through its secretary and others, writ petition no. 13150 of 2022. We refer to the paragraph nos. 4, 5 and 6 :

“4. We are pointing out the aforementioned state of affairs in juxtaposition to the various orders passed by this Court, whereby in view of the fact that in spite of Government Resolution dated 23.06.2017, at no point of time recruitment process was undertaken through Pavitra Portal and the directions were issued to consider the individual cases for grant of approval, ignoring the fact that the recruitment was undertaken de hors the Pavitra Portal.

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."

13. In the present case, respondent no.3/Education Officer has not scrutinized proposal objectively. The proposal needs to be considered in the light of judgments cited in the matter of Rajan Sahadeo Ratul and Others; Ramnath; Sou. Revati Kusha Wagh & Anr.(supra). We therefore propose to direct Education Officer to reconsider the proposal.

14. Learned AGP has referred to judgment in the matter of Pravin (supra). The facts of that case are distinguishable. We are not oblivious of the directions issued by the coordinate bench in that judgment in paragraph no.10. It is for the respondent no.3/Education Officer to examine compliance of Rule 9(2A) and 9(2B). Another judgment cited by the learned AGP is of late Annasaheb which was rendered by following judgment in the matter of Pravin (supra). Education Officer is expected to consider law laid down in both the judgments. In that view of the matter, we allow writ petition partly and pass following order :

ORDER

i. Impugned order dated 03.05.2021 issued by the respondent no.3/Education Officer is quashed and set aside.

ii. The respondent no.3/Education Officer shall consider the proposal, seeking approval for the appointment of the petitioner afresh in the wake of judicial pronouncements, policies of the Government and the relevant record by extending opportunity of hearing, on its own merits.

iii. The respondent no.3/Education Officer shall take decision within a period of six weeks from today and shall not reject the proposal on the ground that the appointment was not through Pavitra Portal.

15. The Writ Petition is disposed of. Rule is made absolute in above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

Najeeb..