



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6710 OF 2022

1. Jai Malhar Shikshan Prasarak Sanstha,
Pimpalgaonrotha, Taluka – Parner,
District – Ahmednagar,
Through its Secretary.
 2. Nilesh Baban Kedari,
Age: 38 years, Occu.:Service
as Asst. Teacher, District – Ahmednagar
- .. Petitioners**

Versus

1. The State of Maharashtra
Through its Secretary
School Education and Sport Department,
Mantralaya, Mumbai.
 2. The Education Officer, (Secondary),
Zilla Parishad, Ahmednagar,
District Ahmednagar
- .. Respondents**

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Mr. V. H. Dighe, Advocate for the petitioners.
Mr. K. S. Patil, AGP for respondents – State.

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

DATE : 10 JULY 2024

ORDER [Per Shailesh P. Brahme, J.] :-

Heard both the sides finally.

2. Petitioners are challenging rejection of the proposal seeking approval
to the appointment of petitioner No.2. Petitioner No.2 belongs to Scheduled

Caste category and he was appointed as a Shikshan Sevak vide order dated 10.06.2014. According to the petitioners, due procedure was followed. The proposal was rejected by the order dated 04.05.2022 on various grounds, namely, there was no vacant post, there was no resolution of school committee, a copy of roster for 2013 or 2014 was not annexed, salary certificate of late Mr. Shejul was not attached, proforma showing attendance of the candidates of the interview and their signatures were not produced, recruitment was not as per Government Resolution dated 06.02.2012 and no post was admissible for recruitment.

3. Learned Counsel for the petitioners submits that petitioner No.2 was belonging to Scheduled Caste and vacancy was created because of demise of Mr. P. P. Shejul. The bills forwarded for the salary of the employees indicates the vacancy. It is further submitted that roster also indicates availability of one post of Scheduled Caste. Learned Counsel for the petitioners places on record compilation of documents to show that all the deficiencies were removed by the Management by forwarding explanation on 21.03.2022 to the Education Officer with necessary documents. It is further submitted that without considering the explanation and the documents, impugned order was passed.

4. Learned Counsel for the petitioners further submits that the procedure for appointment through Pavitra Portal as contemplated by

Government Resolution dated 23.06.2017 was not enforced. The appointment was not regulated by Government Resolution dated 06.02.2012. It is further submitted that considering increase in the strength of the students, post is admissible. Learned Counsel for the petitioners would rely upon the judgment of **Lalit s/o Sureshrao Shinde Vs. The State of Maharashtra and others**, [Writ Petition No.14420 of 2021 decided on 16.04.2024].

5. Per contra, learned AGP would rely upon affidavit-in-reply. He would submit that the proposal for appointment of the petitioner No.2 was submitted after seven years. Advertisements were not published in two newspapers. He would further submit that selection committee was not constituted for selecting the candidates. There was ban imposed by Government Resolution dated 02.05.2012. It is further submitted that procedure as contemplated by Government Resolutions dated 23.06.2017 and 07.02.2019 was not followed.

6. It reveals from record that petitioner being candidate of Scheduled Caste category was appointed on 10.06.2014. The proposal submitted in the month of May 2021 was directed to be decided within six months by orders passed in Writ Petition No.10919 of 2021. The respondent No.2 – Education Officer raised deficiencies in the proposal which were attempted to be removed by tendering requisite documents vide letter dated

21.03.2022.

7. Though various reasons are cited by the respondent No.2 – Education Officer for rejecting proposal of the petitioner No.2, we find that various other reasons which are not basis for the impugned order, have been pressed into service by way of affidavit-in-reply. It is trite law that new grounds cannot be supplied for the first time in the High Court. There is a consistent view that proposal seeking approval cannot be rejected solely on the ground that Government Resolution dated 23.06.2017 and 07.02.2019 are not followed. Learned Counsel for the petitioners has rightly relied on the judgment of **Lalit Sureshrao Shinde (Supra)**. We have also taken same view in the matter of **Shaikh Jaweria Khadarsab Vs. The State of Maharashtra Through its Secretary and Others [Writ Petition No.13150 of 2022 decided on 10.6.2024]** and directed concerned officer to reconsider the proposal.

8. The petitioners have placed on record various documents to show that deficiencies were removed, but no cognizance was taken by the Education Officer. Learned Counsel for the petitioners has attempted to demonstrate that vacant post was available and appointment was by following due procedure of law. We are of the considered view that it would be appropriate for the respondent No.2 Education Officer to reconsider the proposal and to have objective scrutiny. We therefore pass

following order :-

ORDER

- I) Writ Petition is allowed partly.
- II) The impugned order dated 04.05.2022 passed by respondent No.2 is quashed and set aside.
- III) Respondent No.2 Education Officer shall reconsider the proposal of the petitioner No.2 by permitting the petitioners to place on record all relevant papers in support of the proposal.
- IV) Respondent No.2 shall take the decision within a period of four weeks on its own merits and communicate it to the petitioners.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm