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wp 6656.18 R.odt

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

WRIT PETITION NO. 6656 OF 2018

Balaji S/o. Bajirao Jadhav,
Age 26 years, Occ. Service
as Shikshan Sevak,
R/o. Shivnagar, Nanded.

.. Petitioner

versus

1. The State of Maharashtra
through Secretary,
Department of School Education,
Mantralaya,
Mumbai – 32.
2. Dy. Director of Education
Nanded Region, Nanded.
3. Education Officer (Primary)
Zilla Parishad, Nanded.
4. Vasant Shikshan Sanstha,
Nanded, Tq. & Dist. Nanded
Through its President/Secretary
5. The Head Master,
Gurunanak Vidya Mandir,
Shivnagar, Nanded.

. Respondents.

Mr. V.S. Panpatte, Advocate for the petitioners
Mr. S.K. Shirse, AGP for respondent Nos. 1 and 2,
Mr. N.S. Kadam, Advocate for respondent No.3.
Mr. P.P. More, Advocate h/f. Mr. Harish S. Bali, Advocate for respondent
Nos. 4 and 5.

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

RESERVED ON : 22nd APRIL , 2024
PRONOUNCED ON : 9th MAY, 2024.

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

1. Rule. Rule made returnable forthwith. Heard finally with consent of learned advocates appearing for the respective parties.

The petitioner has approached this Court under Article 226 of the Constitution of India, impugning the order dated 31.5.2018, passed by the respondent No.3 – Education Officer (Primary), declining to grant approval to the appointment of petitioner as Shikshan Sevak. The petitioner further seeks direction to release arrears of salary.

2. Mr. V.S. Panpatte, learned counsel for the petitioner submits that respondent No.4 is a registered Trust, who runs respondent No.5 school. On retirement of a senior employee at respondent No.5 school, management made correspondence with respondent Nos. 2 and 3, seeking permission to issue advertisement to fill vacancy of Assistant Teacher on establishment of school. Since there was no response from respondent Nos. 2 and 3 authorities, management published an advertisement dated 2.1.2016, inviting applications from qualified candidates, belonging to V.J. category. The petitioner being eligible for appointment as Assistant Teacher, responded to the advertisement and after going through selection process, came to be appointed vide order dated 7.1.2016. The respondent No.5 submitted proposal dated 12.1.2016 seeking approval to the appointment of petitioner. However, respondent No.3, vide impugned order dated 31st May, 2018, rejected said proposal without assigning justifiable reasons.

3. Mr. Panpatte, would submit that the impugned order depict

total non application of mind. The petitioner possess requisite qualification and has been appointed against a clear vacancy as per reservation roster, hence approval ought to have been accorded to his appointment. He would, therefore urge, to quash and set aside impugned order and direct the respondent No.3 to grant approval so also release consequential benefits.

4. Mr. S.K. Shirse, learned AGP for respondent Nos. 1 and 2, relying upon the affidavit in reply filed by Mr. Prakash Digraskar, submits that appointment of petitioner is made without following due process of law. The advertisement has been issued without prior permission of the authorities, in a newspaper having no circulation. There were surplus teachers waiting for appointment. The reservation roster is not followed. The respondent Nos. 4 and 5 were directed to absorb the surplus teachers vide communication dated 8.11.2017. However they have not complied such directions.

5. We have considered the submissions advanced by the learned advocates appearing for respective parties. It is not in dispute that respondent school communicated office of the Education Officer on 26.8.2015, that Mr. Balaji Warje, Assistant Teacher, is due for retirement on 31.10.2015, he belongs to V.J. category, accordingly, permission was sought to advertise the post and fill up the vacancy. Similarly, on 31.5.2015, separate communication was made to the Deputy Director of Education, Latur seeking permission to advertise the post. As both the authorities failed to respond representation made by school, the respondent Nos. 4 and 5 issued an advertisement dated 2.1.2016, inviting applications for filling up the post of Assistant Teacher from VJ-A

category. The selection of the petitioner is made in pursuance to said advertisement. Consequently, appointment order dated 7.1.2016 came to be issued. The proposal seeking approval to the said appointment was forwarded to the office of the Education Officer. However, vide impugned order dated 31.5.2018, the proposal came to be rejected, giving the following reasons.

- [I] That the permission for advertising the post of Assistant Teacher was not obtained in terms of MEPS Rules.
- [ii] The advertisement was not published in a widely circulated newspaper, that reduced the competition.
- [iii] The advertisement is vague and published in the local newspaper.
- [iv] The appointment is made without absorption of surplus teaches, which is a condition in the staffing pattern;
- [v] The Government Resolution dated 2.5.2012 issued by the School Education and Sports Department prohibits appointments till absorption of surplus teachers.
- [vi] Large number of surplus teachers are available in the District. The appointment of the petitioner is made without ascertaining availability of surplus teachers;
- [vii] As per the reservation roster, the backlog of Scheduled Caste is available. However, appointment of the petitioner is made from VJ-A category.

6. Apparently, respondent Nos.4 and 5 had communicated authorities as regards to the upcoming vacancy in the school and requested for permission to advertise the post. However, such communications were not responded. Eventually, the school management proceeded to advertise the post and filled up the vacancy.

Record indicates that the post reserved for VJ-A category had fallen vacant on retirement of the teacher and petitioner has been appointed against such vacancy. It is true that there was backlog of scheduled caste category as per the roster and management had not cleared same. Therefore, question that posed for consideration before us is, as to whether approval to appointment made against other vacancies could have been rejected.

7. It is not in dispute that the petitioner has been appointed against vacant post. This Court in catena of judgments observed that merely because backlog of a particular reserved category is unfilled, approval can not be refused to the appointment of a candidate, made from other reserved category, unless it is shown that appointment of such a candidate is overlapped against the vacancy of another reserved category. Reference can be given to the judgment of this court in the matter of ***“Shubhada Prabhakar Patil and others. Vs. State of Maharashtra and others”*** reported in 2009(4) Mh. L.J. 788. In present case appointment of petitioner is independently made without affecting reservation earmarked for any other category, particularly SC category. The appointment petitioner never overlapped against post earmarked for Schedule category. Secondly respondent authorities were noticed of upcoming vacancy before advertising post. They failed to respond or object management from proceeding further. Even no surplus teacher was deputed for absorption in response to communication of management. However, when proposal for appointment is moved, all objections are put at service.

8. In that view of the matter, the impugned order is unsustainable in law and is liable to be quashed and set aside.

9. However we would make it record that Management of school shall be under obligation to clear reservation backlog while filling up next vacancy as per reservation roster. The Education officer shall take an undertaking from management for that purpose. Hence, we pass the following order :-

ORDER

[A] The writ petition is allowed;

[b] The impugned order dated 31.05.2018 passed by the respondent No.3 - Education Officer (Primary), Zilla Parishad, Nanded is hereby quashed and set aside;

[c] The Education Officer is directed to grant approval to the appointment of the petitioner w.e.f. 07.01.2016 to 06.01.2019 and take steps to release arrears of salary as per rules, subject to condition that management files undertaking to fill up backlog as per reservation roster approved by competent authority.

[d] Rule made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE.

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-