



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

WRIT PETITION NO. 8025 OF 2023

1. Sau. Latadevi Khandu Agwane,
Age : 33 Years, Occu. : Service
As Assistant Teacher,
R/o Shedol, Tq. Nilanga,
dist. Latur.
Aadhar Card No. 811125085348
2. Sau. Jyoti Vasantrao Patil,
Age : 39 Years, Occu. : Service,
As Assistant Teacher,
R/o Shedol, Tq. Nilanga,
dist. Latur.
Aadhar Card No. 820988619015. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. Maharashtra Shikshan Samiti Nilanga,
Tq. Nilanga, Dist. Latur.
Through its President/Secretary.
4. Maharashtra Higher Secondary School,
Shedol, Tq. Nilanga, Dist. Latur.
Through its Principal. .. Respondents

Shri V. S. Panpatte, Advocate for the Petitioners.

Shri Ruchir S. Wani, A.G.P. for the Respondent Nos. 1 and 2.

Shri S. M. Vibhute, Advocate for the Respondent Nos. 3 and 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 12 JUNE 2024.**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

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

2. Petitioners are the teachers rendering services with the respondent No. 4/school and they are aggrieved by order dated 09.01.2023 passed by the respondent No. 2/Deputy Director of Education rejecting their proposals for approval on the ground that muster has been manipulated and their appointments are not from May 2016 and May 2017 respectively.

3. Petitioners hold requisite qualification for the appointment in the respondent No. 4/Higher Secondary school, which is being run by the respondent No. 3. Petitioner No. 1 belongs to Scheduled Caste category holding requisite validity certificate. Petitioner No. 2 belongs to O.B.C. category holding requisite validity certificate. It is their case that due to retirement of Mr. Vasant Chopale on 30.04.2016 and Mr. Limbraj Survase on 30.04.2017 vacancies were created in the respondent No. 4/school. Respondent No. 3/management made correspondence with the respondent No. 2/Deputy Director of Education on 03.12.2015, 26.07.2016, 19.11.2016 and 26.04.2017 intimating vacancies and seeking permission to recruit the posts as per the roster. As there was no response, management advertised posts in the news paper daily Marathwada Kesari on 22.04.2016 and on

19.04.2017.

4. In response to the advertisements petitioner No. 1 was selected and appointed on 02.05.2016 as a Shikshan Sevak. The petitioner No. 2 was selected and appointed from 02.05.2017 as a Shikshan Sevak. Accordingly, both the petitioners joined services and have been rendering the services. The proposal of the petitioner No. 1 was submitted by letter dated 02.05.2016. The proposal of the petitioner No. 2 was submitted on 02.05.2017. The management was called upon to remove the deficiencies in the proposals. The same was done by the management. By impugned order dated 09.01.2023, after conducting hearing, respondent No. 2/Deputy Director of Education rejected the proposals.

5. Learned counsel for the petitioners submits that the appointments of the petitioners were made after following due procedure of law and as contemplated by Sec. 5 of M. E. P. S. Act read with Rule 9 of M. E. P. S. Rules. Due to the superannuation of the teachers vacancies of permanent sanctioned posts were created. Respondent No. 2/Deputy Director of Education did not respond to the letters issued by the management seeking permission to recruit. After publishing advertisement the appointments were made. Learned counsel further submits that the relevant documents including roster was also submitted along with the proposal. There was backlog of S.C. and O.B.C. categories which was filled in by appointments of the petitioners.

6. Learned counsel submits that the reason assigned for

suspecting the muster is totally misconceived and there are voluminous documents on record to show that the petitioners were actually rendering services. It is being submitted that the respondent No. 2 did not conduct objective scrutiny and failed to appreciate the record in correct prospective. It is further submitted that the proposals seeking approval to appointments of the petitioners were submitted belatedly due to lock down imposed during Covid pandemic.

7. The respondent Nos. 3 and 4 have filed affidavit in reply and supported the case of the petitioners. They have produced on record the seniority list from 2016-2017 onwards, muster roll, relevant pages of daily teaching reports, teachers instruction register, students instruction register, teaching observation register, applications of the petitioners, result sheets, etc. to show that the petitioners were rendering the services after their appointment and the doubt being raised by the Deputy Director of Education in the impugned order is baseless.

8. Per contra, learned Assistant Government Pleader, Mr. Ruchir Wani would defend the impugned order on the basis of affidavit in reply. It is vehemently contended that the muster produced by the management before the Deputy Director of Education indicates that it has been manipulated and petitioners were not working since their date of appointment. He would vehemently submit that the Shalarth Pranali was enforced by Government Resolution dated 23.06.2017. The appointments of the petitioners were of the 2022 and they are shown to have been

recruited from 02.05.2016 and 02.05.2017 respectively in order to overcome the clutches of recruitment through pavitra portal. It is further submitted that proposals were received on 06.10.2022 in the office of the respondent No. 2. It creates doubt about the date of appointment of the petitioners. According to the learned A. G. P., the respondent No. 2 has rightly rejected the proposals. He would rely on the judgment dated 20.10.2022 delivered by the coordinate bench of this Court in the matter of **Late Annasaheb Shikshan Prasarak Mandal and others Vs. The State of Maharashtra and another in Writ Petition No. 9924 of 2021.**

9. We have considered rival submissions of the parties. We have gone through the documents produced on record by the parties. At the outset, it is necessary to mention that the recruitment procedure through Pavitra Portal was introduced by G. R. dated 23.06.2017. It was reiterated by further G. R. dated 07.11.2017. Thereafter superseding earlier Government Resolutions, resolution dated 07.02.2019 was passed, which reiterated the adoption of online portal system for recruitment. We have taken a view vide **order dated 10.06.2024 in Writ Petition No. 13150 of 2022** in the matter of **Shaikh Jaweria Khadarsab Vs. The State of Maharashtra and others** that though pavitral portal is introduced by G. R. dated 23.06.2017, it has not been put to the desired use. After noting various decisions of the coordinate benches and the orders of approvals passed by the Education Officers, while remitting matters to Education Officer for reconsideration, we observed as follows :-

“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.”

10. We find that in the present matter the vacancies were created because of the superannuation of two teachers in the respondent No. 4 school. The posts which were sought to be recruited are permanent sanctioned posts. The staffing pattern produced on record would support the claim of the petitioners.

Before resorting to the recruitment, the management had made an endeavour to intimate the vacancies and to secure prior permission from the respondent No. 2. However, we find that the correspondence was not responded to. Thereafter, advertisements were published and the petitioners responded to it. The petitioner No. 1 was appointed from 02.05.2016, whereas the petitioner No. 2 was appointed from 02.05.2017.

11. We do not find any dispute about the fact that petitioner No. 1 belongs to scheduled caste category and petitioner No. 2 belongs to O.B.C. category. They have validity certificates to support their claims. Only clinching question in this matter is as to whether they actually started rendering services from their respective dates of appointments or after the year 2022. The proposals seeking approval indicates acknowledgment of 06.02.2022. On the basis of muster the respondent No. 2 has drawn an inference that considering the handwriting the muster appears to have been manipulated and their appointments cannot be said to be from the respective dates of appointments.

12. The respondent/management has placed on record voluminous documents to show that the petitioners are working from their respective dates of appointments. The muster is placed on record which was also considered by Deputy Director of Education. Besides that following clinching material is placed on record which is not disputed by the learned A. G. P.

- I. Seniority List.
- II. Extracts of daily teaching report.

- III. Extracts of teachers instructions register.
- IV. Extracts of students instructions register.
- V. Extracts of teaching observation register.
- VI. Applications of the petitioners.
- VII. Cultural register.
- VIII. Copies of result sheets.
- IX. Extracts of internal assessment sheet.
- X. Extracts of result sheet of 12th standard.
- XI. Extracts of function under Shala Siddhi evaluation scheme and science exhibitions.

13. We find that the respondent No. 2/Deputy Director of Education has not conducted objective assessment of the proposals. *Prima facie*, there is material on record to indicate that the petitioners were rendering services from their respective dates of appointments. The respondent No. 2 should have called upon the management to satisfy presence of the petitioners in the service since prior to 2022. We find that the reasons assigned for rejecting approval are unsustainable and objective scrutiny of entire material is necessary. We are inclined to allow the petition partly and relegate the matter to the respondent No. 2/Deputy Director of Education.

14. The learned A. G. P. relies on the judgment in the matter of **Late Annasaheb Shikshan Prasarak Mandal and others Vs. The State of Maharashtra and another** (supra). By relying on the judgment of the coordinate Bench in the matter of **(Pravind Bodhu Kasbe Vs. State of Maharashtra)** the

matter was decided. It is held that compliance of amended Rule 9(2A) and (2B) is mandatory. We find that the facts in the reported case and the case in hand are distinguishable. In view of the directions issued in the matter of Pravin Bodhu Kasbe Vs. State of Maharashtra, it is necessary for the Deputy Director of Education to look into the matter afresh. We therefore pass following order.

ORDER

- (i) Impugned order dated 09.01.2023 passed by the respondent No. 2/Deputy Director of Education is quashed and set aside.
- (ii) The respondent No. 2/Deputy Director of Education shall consider the proposals of both the petitioners afresh along with relevant material and the law laid down by the High Court from time to time in respect of recruitments of the teachers.
- (iii) The respondent No. 2 shall take the decision within a period of six (06) weeks from today after extending opportunity of hearing to both the parties. However, he shall not reject the proposals merely on the ground of delay or for the reasons quoted in the impugned order.
- (iv) Rule is made absolute in above terms. The writ petition is disposed of. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]