



Corrected copy : Corrections have been carried out in view of the speaking to the minutes of the order dated 28.06.2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1782 OF 2019

1. Vivekanand Vikas Pratishthan
Parola, Tq. Parola, Dist. Jalgaon,
Through its Secretary,
Shri. Arun Baburao Pawar,
Age; 55 years, Occu.: Service,
R/o. Jalgaon, Tq. And Dist. Jalgaon.
2. R. B. R. Kanya Madhyamik Vidyalaya,
Pahur, Tq. Jamner, Dist. Jalgaon.
Through its Head Mistress,
Pratibha Vishwasrao Chanvan,
Age: 56 years, Occu.: Service,
R/o. Pahur, Tq. Jamner,
Dist. Jalgaon.
3. Usha Pandit Pawar,
Age: 38 years, Occu.: Service,
R/o. Pahur, Tq. Jamner,
Dist. Jalgaon.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through Principal Secretary,
School Education Department,
Mantralaya Mumbai-32.
2. Committee for Grant of Permission
and Approval to the appointments
in the Secondary School,
Through its Secretary-Education Officer
(Secondary), Zilla Parishad, Jalgaon.

.. RESPONDENTS

...
Mr. M. P. Tripathi h/f Mr. Mahesh S. Deshmukh, Advocate for the
petitioners.

Mr. D. R. Korde, AGP for respondent Nos.1 and 2 – State.

...

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

RESERVED ON : 14 JUNE 2024

PRONOUNCED ON : 21 JUNE 2024

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

- . Heard both the sides finally at the stage of admission.
2. Petitioner – Management along with petitioner No.3 employee are challenging order dated 20.10.2015 passed by respondent No.2 Education Officer rejecting proposal for approval to the appointment of petitioner No.3 as a Shikshan Sevak.
3. It is the case of the petitioners that she was appointed by following due procedure of law on a vacancy of backlog of Vimukta Jati (A). Despite application seeking prior permission and reminders, neither surplus candidates were referred nor permission was given to the petitioner Management to appoint a teacher. Learned Counsel submits that reasons given by Education Officer are unsustainable in view of law laid down in **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra Through Secretary and Ors.** [Writ Petition No.8587 of 2016 along with connected matters decided on 10.07.2017].
4. Learned AGP supports impugned order on the basis of affidavit-in-reply. He would point out that petitioner No.3 is the special teacher

for Arts and staffing pattern under Right to Education Act, 2009 does not provide for any post of such teacher. It is further pointed out that the application dated 31.12.2014 seeking prior permission was never received by the office.

5. Petitioner No.3 belongs to Vimukta Jati (A) and claims to be appointed against a vacancy, which was backlog of Vimukta Jati (A). Petitioner Management had filed application on 31.12.2014 informing the Education Officer about backlog and the vacancy. There appears to be correspondence under Right to Information Act between the Management and the Education Department. It reveals that due to ban imposed by Government Resolution dated 02.05.2012 and availability of surplus teachers, the application of the Management was not considered.

6. It transpires from the papers placed before us that after waiting for permission from the Education Department, petitioner Management proceeded to issue an advertisement for filling up the backlog in the School. In response to the advertisement dated 29.09.2015, petitioner No.3 was appointed against the vacancy of Vimukta Jati (A) as special teacher of Arts. We find that learned Counsel for the petitioners has rightly referred to the judgments in the matter of **Smt. Munoli Rajashri Karabasappa (Supra)** as well as in the matter of **Shirur Shikshan Prasarak Mandal, Ghodnadi, District**

Pune Vs. State of Maharashtra, [Writ Petition No.2024 of 2017 decided on 23.02.2018]. Imposition of ban could not have been an embargo as the recruitment in question which pertained to reserved category.

7. The plea of learned AGP that there was no sanctioned post for special teacher of Art in view of staffing pattern prepared under Right to Education Act, 2009 is concerned, impugned order does not mention about it as a ground to reject the proposal for approval. For the first time the plea has been raised in the High Court. It is not permissible for the respondent No.2 – Education Officer to supply new reasons by way of affidavit-in-reply in view of the decision in **Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others**, [AIR 1978 SC 851]. There has not been any objective scrutiny of the proposal on this ground. In **Mohinder Singh Gill and another (Supra)**, it has been held that :-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p. 18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

8. We notice that respondent No.2 – Education Officer did not consider the vacancy of a backlog, law laid down by High Court as cited by the petitioners and the roster. There is no objective scrutiny by him. It would be in the fitness of things to quash the impugned order and relegate the matter to the same authority for considering it afresh.

9. The Writ Petition is partly allowed.

10. Impugned order dated 20.10.2015 passed by respondent No.2 – Education Officer is quashed and set aside.

11. Respondent No.2 – Education Officer shall consider proposal afresh in the light of judgments cited by the parties and decide the matter within a period of six weeks from today, on its own merits. However, the proposal shall not be rejected for the grounds

mentioned in impugned order and/or additional ground of non admissibility of post of Art teacher.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm