



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11647 OF 2021

Vitthal s/o Hari Dudhbhate,
Age 36 years, Occ. Service as
Shikshan Sevak, R/o. Killari,
Tq. Ausa, Dist. Latur.

... Petitioner.

VERSUS

- 1) The State of Maharashtra,
Through its Secretary
School Education Department,
Mantralaya, Mumba-32.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Superintendent,
Pay and Provident Fund Unit
(Secondary), Latur.
- 4) Maharashtra Shikshan Prasarak Mandal,
Killari, Tq. Ausa, Dist. Latur,
Through its President/Secretary.
- 5) Maharashtra Secondary and Higher Secondary
School, Killari, Tq. Ausa, Dist. Latur,
Through its Principal.

... Respondents

...

Advocate for Petitioner : Mr. V.S. Panpatte
AG.P for Respondent nos. 1 & 2 : Mr. S.P. Joshi
Advocate for Respondent nos. 4 & 5 : Mr. P.B. Gonare

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

DATE : 27.09.2024

ORDER : (PER : MANGESH S. PATIL, J.)

Heard both the sides finally at the stage of admission.

2. The petitioner, who was appointed by the respondent-management pursuant to the advertisement published by respondent nos. 4 and 5 on 10.06.2018 in daily Prativyavhar and interview held on 17.06.2018, and was appointed as a Shikshan Sevak initially for a period of three years on 25.06.2018, is aggrieved and challenging the decision of respondent no. 2 Deputy Director of Education, Latur Division, refusing to grant approval to his appointment on the ground that it was not made in the light of the government resolution dated 23.06.2017 and without prior permission of his office.

3. We have heard both the sides and perused the papers. *Ex facie*, it is clear that the impugned communication refusing to grant approval is based on two grounds. Firstly, the petitioner was not appointed through the *Pavitra Portal* as is required by the government resolution dated 23.06.2017. Secondly, on the ground that the petitioner was appointed without prior permission. Though the impugned communication is silent, the respondent no. 2 must be in contemplation of the appointment not being made in accordance with Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, and Rule 9 of the Employees of Private Schools (Conditions of Service) Rules, 1981.

4. So far as the first ground is concerned, the decisions of several division benches over a period of time are replete with, showing inability of the State Government in undertaking the recruitment process through *Pavitra Portal* in the light of the government resolution dated 23.06.2017. Suffice for the purpose to refer to our decision in the Writ Petition No. 13150/2022 dated 10.06.2024, in the matter of **Shaikh Jaweria Khadarsab Vs. The State of Maharashtra and others.**

5. So far as the second ground is concerned, the impugned decision merely vaguely states that no prior permission was obtained from the office of respondent no. 2 Deputy Director of Education, Latur Division, Latur. In

the light of the stand being taken in the affidavit in reply filed by respondent no. 2, the petitioner has filed rejoinder annexed there with are the copies whereby it is demonstrated that by a communication dated 21.12.2017 (Exh. K) the management had sought permission to fill in the post of Assistant Teacher, which had become vacant due to superannuation of one Mr. Jadhav Tanaji Daulatrao, on 30.04.2018. It bears the signature of the inward clerk of the office of respondent no. 2. A communication dated 23.05.2018 (Exh. L) has also been filed with the rejoinder, whereby respondent no. 2 forwarded the pension papers of Mr. Jadhav to the office of the Accountant General. A copy of the paper cutting wherein the advertisement was published by the management (Exh. D) on 10.06.2018, report of the selection committee (Exh. E) and the order of appointment (Exh. F) would further substantiate the petitioner's stand about necessary intimation having been given to the office of respondent no. 2, before undertaking the recruitment process.

6. Pertinently, Section 5(1) and Rule 9 do not contemplate any prior permission but merely an intimation to the Education Officer or Deputy Director of Education so that if at all there are surplus teachers available those can be accommodated against the vacancy to be filled in and to ensure that reservation policy is being followed.

7. The affidavit in reply of respondent no. 2 merely places emphasis on the matter of operation of *Pavitra Portal* for undertaking recruitment and is conspicuously silent as far as the second ground being taken in the impugned communication. Even no surrejoinder has been filed subsequent to the rejoinder.

8. In the light of above, the impugned order refusing to grant approval will not be sustainable in law albeit respondent no. 2 will have to consider the proposal seeking approval to the petitioner's appointment independently, on its own merits.

9. It would be apposite to observe that though the first ground would not be sustainable, in our considered view, respondent no. 2 will have to take appropriate decision afresh in respect of the second ground on its own merits. Needless to state that even if he intends to solicit some information from the management, it would always be open for him to undertake that exercise and the management would be obliged to respond to the queries, if any, to be raised by him and make necessary compliances.

10. The writ petition is partly allowed.

11. The impugned order to the extent of refusing to grant approval to the petitioner's appointment on the ground that it was not made in accordance with the government resolution dated 23.06.2017, is quashed and set aside. Respondent no. 2-Deputy Director of Education, Division Latur, shall consider the proposal afresh on its own merits, as expeditiously as possible, and in any case within six weeks, but shall not refuse to grant the approval on the ground that the petitioner was not appointed in accordance with government resolution dated 23.06.2017.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-