



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11069 OF 2018

Sow. Pornima W/o. Rajesh Bhole
Age : 36 years, Occu. Service / Assistant Teacher,
R/o. Hanumannagar, Varangaon,
Tq. Bhusawal, Dist. Jalgaon .. Petitioner

Versus

- 1] The State of Maharashtra
Through its Secretary, Education Department,
Mantralaya, Mumbai – 32.
- 2] The Education Officer (Secondary)
Zilla Parishad, Jalgaon
- 3] The Dy. Director of Education,
Nasik Region, Nasik
- 4] Mahatma Gandhi Vidyalaya, Varangaonm
Tq. Bhusawal, Dist. Jalgaon,
Through its Headmaster &
Secretary School Committee,
Ramrao Ragho Nikumbh,
Age : 57 years, Occu. Service,
R/o. Ganpati Nagar, Varangaon,
Tq. Bhusawal, Dist. Jalgaon
- 5] The Varangaon Education Society,
Through its Secretary,
R/o. Mahatma Gandhi Vidyalaya,
Varangaon, Tq. Bhusawal,
Dist. Jalgaon .. Respondents

WITH

CIVIL APPLICATION NO. 8249/2023 IN WP/11069/2018

(Mannohar Nilkanth Choudhari and another

Versus

The State of Maharashtra through its Secretary and others)

...

Advocate for petitioner : Mr. Vinod P. Patil
AGP for the respondent – State : Mr. B.M. Dhanure
Advocate for respondents no. 4 and 5 : Mr. Vijay B. Patil
None present for applicants in CA/8249/2023

...

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

DATE : 19 SEPTEMBER 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. It is made returnable forthwith. AGP Mr. Dhanure waives service for respondent nos. 1 to 3 and Mr. V.B. Patil waives service for respondent nos. 4 and 5.

2. None is present for the applicant / intervenor.

3. The petitioner who was stated to have been appointed as a *Shikshan Sevak* in respondent no. 4 – school, run by respondent no. 5 – management, is challenging the communication of the respondent no. 2 who is the Education Officer (Secondary), Zilla Parishad, Jalgaon, dated 26-12-2014 (**Exhibit – I**) whereby he had informed the headmaster of respondent no. 4 – school that the advertisement for undertaking recruitment to the post of *Shikshan Sevak* published on 25-12-2014 could not have been published without prior permission and in the light of the ban on the recruitment imposed vide government resolution dated 02-05-2012, unless all the surplus teachers from the district were absorbed and directing him to cancel the advertisement and the recruitment and expressly directing not to forward any proposal for grant of approval to the appointments.

The petitioner is also seeking a writ of *mandamus* directing respondent nos. 4 and 5 to forward appropriate proposal to the Education Officer, for grant of approval to her appointment and is also soliciting a writ against the Education Officer, to decide the proposal and to direct payment of salary to her. She is also seeking a direction to the effect that since she had also put in three years of service as a *Shikshan Sevak* with effect from 23-02-2015, she may be directed to be appointed in the regular cadre of Assistant Teacher with effect from 24-02-2018, and to pay salary of the post.

4. The learned advocate for the petitioner would take us through the papers and would submit that the petitioner was appointed by following due process in light of section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (**MEPS Act**) and Rule 9 of the Rules framed thereunder. A permission was solicited and was granted by the Deputy Director of Education and the Education Officer, advertisement was published and she was appointed.

5. He would, therefore, submit that the Education Officer – respondent no. 2 even without there being any proposal, could not have legally issued the impugned communication which was clearly done at the instance of an individual. It was a different matter had he taken appropriate decision pursuant to the proposal to be submitted by

the management and the headmaster for grant of approval. However, due to change in the managing committee of respondent no. 5 – society / trust, the matter was kept lingering, no suitable proposal was ever forwarded for granting approval to the petitioner's appointment. In fact, respondent nos. 4 and 5 had sought to challenge the very same communication dated 26-12-2014 (**Exhibit – I**) by filing writ petition no. 12011 of 2014, however, due to the change in the management, the writ petition was sought to be withdrawn. Since the petitioner had filed an application for intervention in that writ petition made a request to transpose her as a petitioner, this Court permitted the petition to be withdrawn and even permitted the petitioner to prosecute the cause by way of an independent writ petition. This is how, the present petition has been filed.

6. The learned advocate would also endeavour to demonstrate that even there are circumstances indicating that the petitioner has been actually working in the school and has been assigned with various duties from time to time.

7. The learned advocate for respondent nos. 4 and 5 would strongly oppose the petition. He would submit that no due process of law was followed, there was no permission for undertaking the recruitment. Petitioner was being sought to be recruited by way of a backdoor entry, being the daughter of the erstwhile president of

respondent no. 5 – society. He was holding the post illegally and could manage to publish the advertisement on 25-12-2014 and on the very next day, by the impugned communication, the Education Officer had rightly intervened and directed not to go ahead with the process. She had never been working with respondent no. 4 – school and the petition be dismissed.

8. The learned AGP would submit that since the Education Officer had received the information about illegal recruitment being undertaken, he had sought to intervene by issuing the impugned communication. No fault can be found with the right exercised by him.

9. We have considered the rival submissions and perused the papers including the affidavit in reply filed by respondent nos. 4 and 5, affidavit in rejoinder filed by the petitioner and even the additional affidavit filed by respondent nos.4 and 5 pursuant to the amendment of the petition.

10. At the outset, it is necessary to note that since it is a matter of employment in respondent no. 5 – society, the role of the Education Officer and the Department of Education, in light of the provisions of the MEPS Act, would be only to grant or refuse approval to the appointment of a teaching or a non-teaching staff recruited by it. The right to recruit would be inherent. The role of the Education

Department could only be restricted to the manner in which the recruitment takes place and that too only because the government grants would be made available to the extent the staff is sanctioned and approved. If a management undertakes recruitment beyond the staffing pattern approved by the state government, the consequence would be that the government would be under no legal and moral obligation to make available grants for payment of salaries to such additional staff. It is wholly a matter between the society and the individual employee recruited by it. In other words, even if the recruitment takes place *de hors* the MEPS Act and the Rules, it would not be illegal.

11. True it is that by virtue of section 5 of the MEPS Act and Rule 9 of the MEPS Rules, the modalities have been prescribed for undertaking a recruitment process by the management running an educational institution. It is pursuant to these provisions that the proposals are forwarded to the Education department for grant of approval to the appointments made. Obviously, the Education Officer and the Deputy Director of Education would be within their rights to scrutinize such proposals in light of the afore-mentioned provisions and the government policies.

12. We are pointing out this precisely for the reason that the impugned communication dated 26-12-2014 issued by respondent no. 2 – Education Officer travels much beyond the circumscribing limits on his powers, as an Education Officer for granting or refusing to grant approvals to the appointment of teaching and non-teaching staff. What the impugned communication demonstrates is that even without there being any proposal soliciting approval to any appointment, he has over-enthusiastically exceeded the powers and sought to prevent the recruitment process being undertaken. The impugned communication refers to some ban on the recruitment pursuant to the government resolution dated 02-05-2012 and availability of surplus staff in the district. However, all such exercise has been done by him *sans* any proposal and at the instance of an individual who was apparently objecting to the recruitment process being undertaken. Be that as it may, the fact remains that the impugned communication directing respondent no. 4 - headmaster not to undertake the recruitment process is in the form of an injunction clamped by the Education Officer at the instance of some individual and is clearly beyond the purview of his powers under the MEPS Act and is liable to be struck down.

13. Whether the petitioner has been appointed by following due process as is contemplated under section 5 of the MEPS Act and

the MEPS Rules, 1981 framed thereunder, would be relevant and can be decided objectively only pursuant to the proposal to be forwarded by respondent no. 5 – society to the Education Officer. It cannot happen beforehand. Obviously, neither the petitioner is seeking nor can even we, in exercise of powers under Article 226 of the Constitution of India, bind respondent no. 2 – Education Officer in taking appropriate decision. He will have to do so on the merits and in accordance with law. It is not that there is nothing on the record to demonstrate that no process as is contemplated under section 5 and rule 9 was ever undertaken. In fact, the copies of permissions granted by the then Education Officer and Deputy Director of Education have been placed on record. A copy of advertisement is also there. If such is the state-of-affairs, it would be incumbent on the part of respondent nos. 4 and 5 to forward appropriate proposal for grant of approval to the appointment of the petitioner.

14. True it is that in the additional affidavit filed by respondent nos. 4 and 5, a factual dispute has been raised by saying that the petitioner has not been actually working as a *Shikshan Sevak*. Obviously, we cannot undertake any scrutiny in that respect being purely a factual dispute. However, we cannot ignore the fact that in the affidavit in rejoinder filed by the petitioner together with the annexures, it has been specifically mentioned and demonstrated that she was

appointed by the Maharashtra State Board of Secondary and Higher Secondary Education, Nashik Division Board, Nashik as a supervisor in the S.S.C. examination that was to be conducted in February / March 2018, by the communication dated 28-02-2018. Even some other record is produced to substantiate her stand that she has been actually working with respondent nos. 4 and 5. A diary in respect of the teaching exercise undertaken maintained by the petitioner and having signatures of the Supervisor and the Deputy Headmaster are also annexed to the rejoinder of the year 2018. Even she was assigned answer papers for assessment under the signatures of the Supervisor and class teacher in respect of unit tests in the year 2019.

15. Pertinently, though additional affidavit was filed on behalf of respondent nos. 4 and 5 after the petitioner filed this rejoinder, there is no specific denial of the stand being taken in the rejoinder and the material produced along with it to demonstrate and substantiate her stand of having actually been working with respondent nos. 4 and 5.

16. This apart, as is mentioned herein-above, apparently permission was granted to undertake recruitment process, an advertisement was published and the petitioner was given an appointment order. Therefore, irrespective of the objection being raised by respondent nos. 4 and 5, the afore-mentioned documents and circumstances are sufficient to demonstrate that the petitioner is

not a stranger but was given an appointment by respondent no. 5 – society. If that be so, it would be imperative for respondent nos. 4 and 5 to forward appropriate proposal to respondent no. 2 – Education Officer for grant of approval to her appointment initially as a *Shikshan Sevak* and subsequently as an Assistant Teacher.

17. It is also pertinent to note that even the then management had sought to challenge the selfsame impugned communication by filing writ petition no. 12011 of 2014. Even in that petition, memo of which is available on the record, respondent nos. 4 and 5 had raised objection to the selfsame impugned communication by demonstrating as to how the recruitment process was undertaken in accordance with law. Though, may be due to change in the management, the incumbent managing committee of respondent no. 5 had decided to withdraw the writ petition, the stand taken in the petition memo duly supported by a verification cannot be resiled by the incumbent management by taking some contrary stand. Even otherwise, while granting leave to withdraw the writ petition, this petitioner was permitted to seek the relief by filing separate writ petition as she had sought to intervene and even had sought to be transposed.

18. Be that as it may, it would be now a matter to be decided by respondent no. 2 – Education Officer whether to grant approval to the petitioner's appointment or not. For that reason, it would be

appropriate that the petition is allowed and by setting aside the impugned communication, respondent nos. 4 and 5 are directed to forward appropriate proposal to respondent no. 2 – Education Officer and he is directed to consider and decide it on its own merits. Needless to state that depending upon the decision, the petitioner would be entitled to the consequential reliefs.

19. The writ petition is partly allowed in following terms :

20. Impugned communication dated 26-12-2014 issued by respondent no. 2 - Education Officer (Secondary), Zilla Parishad, Jalgaon, is quashed and set aside.

21. Respondent nos. 4 and 5 shall forward appropriate proposal for grant of approval to the petitioner's appointment together with the necessary documents to respondent no. 2 – Education Officer within four (4) weeks.

22. Respondent no. 2 shall take appropriate decision in accordance with law and on its own merits on such proposal, within four (4) weeks of receipt of the proposal.

23. If respondent no. 2 grants approval, all the respondents shall take immediate steps to grant all the consequential monetary benefits.

24. Rule is made absolute accordingly.
25. Pending civil application is disposed of.

[SHAILESH P. BRAHME]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE