



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11311 OF 2019

1. Jayshree d/o Anil Kadam,
age 31 years, Occ. Service as Shikshan Sevak,
R/o Shahu Nagar, Latur.
Tq. & Dist. Latur.
2. Rahul s/o Babruwan Mane,
age 38 years, Occ. Service as Shikshan Sevak,
R/o Shahu Nagar, Latur,
Tq. & Dist. Latur.
3. Kasar Imran Khan Maheboob Khan,
age 29 years, Occ. Service as Shikshan Sevak,
R/o Labour Colony, Latur,
Tq. & Dist. Latur. Petitioners.

Versus

1. The State of Maharashtra,
Through it's Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Latur.
4. Samata Shikshan Prasarak Mandal,
Shahu Nagar, Nanded Road, Latur.
Tq. & Dist. Latur.
Through it's President/Secretary,
5. Milind Secondary and Higher Secondary
Vidyalaya, Labour Colony, Latur,
Tq. & Dist. Latur,
Through it's Headmaster. Respondents.

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Mr. V. S. Panpatte, advocate for petitioners.

Mr. P. S. Patil, AGP for Respondent Nos.1 to 3.

Mr. S. S. Deshmukh, Advocate for Respondent 4 & 5.

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

Dated : 28th February, 2024.

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JUDGMENT :- (Per S.G.Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The Petitioners have approached this Court under Article 226 of the Constitution of India, impugning the order dated 7.3.2019 passed by the Respondent No.3 Education Officer (Secondary), Zilla Parishad, Latur and further seeks issuance of writ of mandamus against him to grant approval to the their appointment as 'Shikshan Sevak' for the period of three years, thereafter as 'Assistant Teacher' and release the salary with consequential benefits.

3. Mr. V.S. Panpatte, learned advocate appearing for the petitioners submit that the respondent no.4 Management runs respondent no.5 School. In the year 2016, respondent no.4 advertised the vacant post of teachers as per the Staffing Pattern and reservation roster. Before issuance of such advertisement, correspondence was made with respondent no.3, seeking permission to fill up the vacancies, however, there was no response from the Education Officer. Petitioners,

who were holding necessary qualification responded to the advertisement issued by the Management. The petitioners were subjected to selection process, consequently, they have been appointed with respondent no.5 School. However, proposals for approval to such appointments have been turned down by education officer giving reason that the appointments were made, when appointments were banned so as to absorb surplus teachers. The Petitioners had assailed the said order before this Court in Writ Petition no.372 of 2018. This Court quashed and set aside the order of the Education Officer and directions were issued to re-consider the approvals without being impeded by the reasons of the rejection as stated in the subject order.

4. Mr. Panpatte would further submit that ignoring the observations of this Court in earlier round of litigation, respondent no.3 passed impugned order dated 7.3.2019 and again rejected the approvals by giving the reason that the petitioners do not possess TET certificate. He would submit that none of the reasons mentioned in the impugned order are sustainable in law being contrary to directions given by this Court in various pronouncements. He would therefore urge to quash and set aside the impugned order and allow the writ petition in terms of the prayer clauses.

5. Mr. P.S. Patil, the learned AGP appearing for respondent nos.1 to 3 supports the impugned order by placing reliance on averments in the affidavit-in-reply dated 15.1.2020 and additional affidavit-in-reply dated 4.4.2022 and submits

that petitioner no.1 is appointed from open category. Further, she was not holding TET qualification. Her appointment is for subject of Marathi. Therefore, her appointment cannot be regulated in terms of the Government Resolution dated 24.8.2018. He would submit that the petitioner no.2 and 3 are not compliant with TET qualification. Therefore, Education Officer is justified in rejecting the approval.

6. Mr. S.S. Deshmukh, learned advocate appearing for respondent nos.4 and 5 supports petitioners.

7. We have considered the submissions advanced by the learned advocates appearing for the respective parties. We have perused the record. The details of the petitioners which are necessary for deciding the issue in question are summarized hereunder in tabular form, which reads thus :-

Sr.No.	Category	Education	Permission	Advertisement	Appointment
P-1	Open	B.A. B.Ed (Marathi)	25.01.2016	07.08.2016	01.09.2016
P-2	SC	Hsc. D.Ed	25.01.2016	07.08.2016	01.09.2016
P-3	OBC	B.Sc. B.Ed. (Mathematics)	06.04.2017	15.07.2017	01.08.2017

8. Proposal for grant of approval to the appointment of the petitioners was previously rejected by the Education Officer vide order dated 18.9.2017, mainly, giving reason that absorption of the surplus teachers was in progress, therefore, in terms of proviso to section 5(1) of MEPS Act, 1977 the proposal for approval of the petitioners cannot be considered. Petitioners had assailed the order dated 18.9.2017 in Writ Petition no.372 of 2018. The Respondent-Education Officer

filed his affidavit-in-reply and supplemented rejection of approval on various additional grounds. However, this Court while allowing Writ Petition observed that since appointment of the petitioner nos.1, 3 and 4 was from reserved category and appointment of petitioner no.2 was in the subject of Marathi, ban on recruitment would not be applicable. It is further observed that ban under Government Resolution dated 2.5.2012 was partially relaxed under various Government Resolutions. Therefore, the impugned order cannot be sustained in law and accordingly it was quashed and set aside with further directions to examine individual cases of the petitioners in the light of the observations and to take necessary steps to grant approval to the appointment of the petitioners as 'Shikshan Sevak' from their respective dates of appointment and also release salary/wages as admissible to them.

9. The impugned order in the present writ petition would depict that the proposal for grant of approval have been rejected once again giving the reason that the petitioners does not qualify in terms of the Government Resolutions dated 24.8.2018 and that they does not possess TET qualification. At this stage, reference can be given to the order passed by this Court in matter of **Lalit Shinde Vs. The State of Maharashtra and others**, [Writ Petition No.10270 of 2019], wherein this Court observed that Pavitra Portal has become operative since 20.6.2018 and appointment made prior to such date cannot be objected on the ground that such appointment is not through Pavitra Portal. In another matter, i.e. **Writ Petition no.8886 of**

2019 in case of Kiran Kumar Metalwad Vs. The State of Maharashtra and others, this Court observed that time to obtain qualification of TET was extended up to 30.3.2019 and as such, the appointment made prior to such date was directed to be approved. In view of the aforesaid pronouncement of this Court, the reason adopted by the Education Officer for rejecting the approval to the petitioner's appointment made on 1.9.2016 and 1.8.2017 cannot be countenanced. It can be observed here that when the Management made correspondence with the Education Officer in the month of January, 2016 and April, 2017, seeking permission to advertise the vacant posts, no surplus teachers were made available. Even, those correspondence were not replied. This Court in **Gopal Siddheshwar Akhade and ors Vs. State of Maharashtra** reported in [MANU/MH/2590/2013] has taken a view that when authorities had not responded to the application and proceeded to advertise and then appoint candidates, then such appointments would be as per procedure. In this background, if the Management has moved ahead with requisite steps to fill up the vacancy, there was no reason to reject the approval to appointments, particularly, when the petitioners possess requisite qualifications and posts were available as per sanctioned staffing pattern as well as reservation roster. In that view of the matter, we are inclined to allow the Writ Petition and proceed to pass the following order.

ORDER

- i. The Writ Petition is partly allowed.

- ii. The impugned order dated 7.3.2019 passed by the Respondent no.3 Education Officer (Secondary), Zilla Parishad, Latur is hereby quashed and set aside.
- iii. The Respondent No.3-Education Officer (Secondary), Zilla Parishad, Latur is hereby directed to accord approval to the appointment of the Petitioners as “Shikshan Sevak” for the period of three (3) years and thereafter as “Assistant teacher” from the dates of their respective appointments and also take necessary steps for release of allowances/salary as per law within a period of Three (3) Months from the date of receipt of this order.
- iv. Writ Petition is accordingly disposed off. Rule is made absolute in above terms. No costs.

(S.G.CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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