



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

WRIT PETITION NO. 12308 OF 2023

Chetan Sardar Nikumbhe and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

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

Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 to 4.

Shri Rakesh C. Brahmankar, Advocate for the Respondent Nos. 5 to 7.

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

DATE : 24 JUNE 2024.

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard both the sides finally at admission stage with consent of the parties..

2. Petitioners are aggrieved by communication/order dated 24.05.2023 passed by the respondent No. 3/Education Officer (Secondary), Zilla Parishad, Nandurbar refusing to grant approval to their appointments on two grounds namely, ban imposed by the Government Resolution dated 02 May 2012 and for not following online procedure of web portal contemplated by the Government Resolution dated 23 June 2017.

3. Learned counsel for petitioners submits that the respondent No. 3/Education Officer did not conduct objective scrutiny of the proposals and rejected the approval, when Government Resolutions dated 02 May 2012 and 23.06.2017

cannot be made applicable. He would further submit that petitioners were appointed after following due procedure of law as contemplated by Section 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 read with Rule 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981. He would rely upon the **decision dated 10 July 2017** of the coordinate bench recorded in the matter of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra and others in Writ Petition No. 8587 of 2016**. He further refers to application for prior intimation submitted on 07.01.2020 and intimation to the Education Department through pension papers of the superannuated teachers. He would submit that appointments of the petitioners were against reserved posts except that of petitioner No. 4, which is not appreciated by the Education Officer.

4. Respondent Nos. 5 to 7 are the educational institutions and the schools where the petitioners are rendering services. By affidavit in reply, they have placed on record relevant documents to demonstrate that due procedure was followed and application for prior permission was submitted on 07.01.2020, which was not responded to by the Education Officer.

5. Per contra, learned Assistant Government Pleader appearing for respondent Nos. 1 to 4 would submit that no prior permission was secured by the management. Undue haste was made in recruiting the petitioners. Newspaper Shani Sandesh in

which advertisement was published was non existent. The procedure contemplated by G. R. dated 23.06.2017 has not been followed. Lastly, reliance is placed upon the directions of the coordinate bench in the matter of **Pravin Bodhu Kasbe Vs. The State of Maharashtra and others in Writ Petition No. 3142 of 2020 judgment dated 03.08.2021.**

6. We have considered the submissions of the parties. Impugned communication indicates only two reasons in rejecting proposals for grant of approval namely ban imposed by G. R. dated 02.05.2012 and non adherence to the procedure laid down by G. R. dated 23.06.2017. There is no dispute that sanctioned posts were available for the recruitment due to the vacancies created by superannuation of the earlier employees. Respondent/management published advertisement in the newspaper Shani Sandesh as well as Dainik Warta. Advertisement indicates the particulars of the reservation, subject and the posts.

7. Respondent/management appears to have made application on 07.01.2020, which bears outward number and acknowledgment of the office of the respondent No. 3 dated 08.01.2020. Affidavit in reply of the respondent Nos. 1 to 3 is silent in this regard. The respondent No. 3/Education Officer should have responded the communication.

8. It further reveals from record that the petitioner No. 1 belongs to the scheduled caste category and qualified for the subject Mathematics. Petitioner No. 2 belongs to N. T. category

and qualified for subject Science. Petitioner No. 3 belongs to the Scheduled Caste category and qualified for subject English. Petitioner No. 4 belongs to open category and qualified for subject Mathematics. Petitioner No. 5 belongs to O.B.C. category and qualified for the subject Marathi. Both advertisements indicate that all the petitioners were eligible for the subjects and the category.

9. Learned counsel for petitioners has rightly referred to the judgment in the matter of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra and others** (supra). Its paragraph No. 9 is as follows :

9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents – Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-

- (a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;
- (b) where the appointments made for filling up vacancies in English, Mathematics and Science;
- (c) where the recruitment is made to fulfil the backlog of reserve categories candidates;

10. All the petitioners are covered by category (b) and (c). The respondent No. 3/Education Officer ought to have conducted objective scrutiny of the proposals. We have taken a view **vide judgment dated 10.06.2024** in the matter of **Shaikh Jaweria**

Khadarsab Vs. The State of Maharashtra and others in Writ Petition No. 13150 of 2022 that the Government Resolution dated 23.06.2017 has not been put to desired use and the proposal for the approval cannot be faulted with on the ground of non adherence to the procedure contemplated by G. R. dated 23.06.2017.

11. Though the learned A. G. P. has referred to the directions issued by the coordinate bench in the matter of **Pravin Bodhu Kasbe Vs. The State of Maharashtra and others** (supra), impugned order cannot sustain because there is no objective scrutiny as per the directions issued by the Division Bench in para No. 10 of its judgment. We are of the considered view that matter needs to be referred to the respondent No. 3/Education Officer for reconsideration of the proposals.

12. For the reasons recorded above, we pass following order.

13. Impugned communication/order dated 24.05.2023 is quashed and set aside. The respondent No. 3/Education Officer (Secondary), Zilla Parishad, Nandurbar shall reconsider the proposals seeking approval to the appointments of the petitioners on its own merits and shall decide it as expeditiously as possible and in any case within a period of four (04) weeks from today. It shall not be rejected on the self same grounds mentioned in the impugned order. Writ petition is disposed of.

[**SHAILESH P. BRAHME, J.**] [**MANGESH S. PATIL, J.**]
bsb/June 24