



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11701 OF 2019

Sayas s/o Nagnath Surnar,
Age: 29 Years, Occ. Service as Asst. Teacher,
R/o. Kul Swami Nagar, Barshi Road,
Tq. and Dist. Latur.

... PETITIONER

V/s.

1. The State of Maharashtra
Through its Secretary,
Education Department
Mantralaya, Mumbai-32.
2. The Education Officer (Primary),
Zilla Parishad, Latur.
3. Bhartiya Dnyanvardhani Lok Vikas
Sanstha, Helamb, Tq.Devni, Dist. Latur
Through its Secretary
4. Netaji Subash Chandrabos Primary
Vidhayala, Subhashnagar, Barshi Road,
Latur, Tq. and Dist. Latur
Through its Headmaster.
5. Balbhim Tukaram Rathod,
Age Major, Occ. Service as Asst. Teacher,
Netaji Subhash Chandrabos Primary
Vidayala, Subhashnagar, Barshi Road,
Latur, Tq. and Dist. Latur.
6. Chief Executive Officer,
Zilla Parishad, Latur.

... RESPONDENTS

...
Mr. V.S. Panpatte, *Advocate for the Petitioner*
Mr. P.K. Lakhotiya, *AGP for Respondent-State*
Mr. V.C. Patil h/f. U.B. Bondar, *Advocate for R/2*
Mr. G.A. Gadhe, *Advocate for Respondent Nos.3 & 4*
Mr. R.D. Biradar, *Advocate for Respondent No.5*
...

**CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.**
RESERVED ON : 2nd February, 2024
PRONOUNCED ON : 4th April, 2024

JUDGMENT (Per: Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. By the present petition under Article 226 of the Constitution of India, the Petitioner has put forth prayer clause- B', C & D as under:

“B) By issue of Writ of Mandamus or any other Writ or directions in like nature, the impugned order dt. 26.6.2019 passed by the Respondent No.2 Education Officer (Primary) Zilla Parishad Latur, may kindly be quashed and set aside.

C) By issue of Writ of Mandamus or any other Writ or Directions in like nature, the impugned order dt. 26.6.2019 passed by the Respondent No.2 Education Officer (Primary) Zilla Parishad Latur, may kindly be modified and salary of the petitioner be continued as Assistant Teacher working with respondent no. 4 school

D) To hold and declare that the impugned order dt. 26.6.2019 passed by the respondent no. 2 Education Officer (Primary) Zilla Parishad Latur is null and void.”

3. Heard the counsels appearing for respective parties, Adv. V. S. Panpatte for Petitioner, Mr. P. K. Lakhotiya, AGP for Respondent No. 1 and Adv. V. C. Patil, h/f. Adv. U. B. Bondar for Respondent No. 2, Adv. G. A. Gadhe for Respondent Nos. 3 & 4, and Adv. R. D. Biradar, for the Respondent No. 5, at length. Besides oral arguments, the learned counsel for the Petitioner as well as Respondent Nos. 3, 4, & 5 have tendered written notes.

4. The learned counsel for the Petitioner submits that the Petitioner was appointed as an Assistant Teacher after due selection process by the Respondent No. 3 Management, vide appointment order dated 11.06.2011 on probation for 2 years. He was posted with the Respondent No. 4 - School against vacant and sanctioned post . At the time of appointment the Petitioner was HSC., D.Ed. and subsequently he did B.A.. The Respondent No.2 - Education Officer granted approval to the appointment of the Petitioner vide order dated 20.04.2012 on Non-Aided basis. In the year 2012-2013, the Respondent No.4 - School, started receiving 20% grant-in-aid. The Petitioner successfully completed probation period, therefore, vide order dated 22.07.2014 issued by the Respondent No. 2, the Petitioner was granted approval as permanent employee w.e.f. 11.06.2013 on 20% partial grant-in-aid from the month of June, 2012. Total 8 posts were sanctioned with the Respondent No. 4 for Non-Aided category. The Petitioner's appointment was

as per the approved staffing pattern. In the academic year 2012-2013, out of 9 posts, 8 posts have been brought on partial aided and 1 post was allotted to primary graduate teacher on no grant basis. One (1) post of Headmaster was kept under Non-aided category vide order dated 10.02.2015 issued by Respondent No.2 and the same position was maintained while releasing grant in aid from 20% to 60%, 80% and 100%.

5. The Respondent No.2 - Education Officer, granted permanent approval to the Petitioner as a primary teacher vide order 22.07.2014 and stages wise grants order. However, on 26.06.2009, Respondent No.2 passed the impugned order thereby granted permanent approval to the appointment of the Respondent No.5 on 20% grant-in-aid basis w.e.f. June, 2012 on completion of 2 years of probation period as on 14.11.2013 though he is junior to the Petitioner and no proposal forwarded by the Respondents Nos.3 & 4. Therefore, impugned order is illegal, bad in law, hence, prayed for quashing and setting aside the same, so also, the Petitioner is entitled to receive continuous salary being an Assistant Teacher.

6. Mr. Bondar, the learned counsel for the Respondent No. 2 Education Officer, submits that, as per the approved staffing pattern and GR dated 29.11.2012, 7 posts of Assistant Teacher as well as 1 post of Graduate Teacher in the Respondent no. 4 School has been sanctioned. The Respondent

No. 4 School started receiving 20% grant in aid from the month of June 2012. As per approved staffing pattern only 7 posts of Assistant Teacher and 1 post of Graduate Teacher were sanctioned with the Respondent No. 4 School. However, at the time of appointment, Respondent No.5 was the only graduate teacher i.e. B.Ed. Therefore, Respondent No. 2 granted approval to the appointment of Respondent No.5 on 01.05.2012. As per GR dated 29.12.2015, Respondent No.5 is granted the pay scale w.e.f. 01.06.2019 on 20% grant in aid basis. The Petitioner was not having B.A. B.Ed.,therefore, he was not appointed as a primary Graduate Teacher. Hence, the Petitioner is not entitled for the pay scale of primary graduate teacher. Therefore, impugned order is just and proper, hence, prayed for dismissal of the petition.

7. Adv. G.A. Gadhe, the learned counsel for the Respondents Nos. 3 & 4 submits that, though the proposal for grant of approval in respect of Respondent No. 5 was not submitted, still the Respondent No. 2 Education Officer suo moto accorded approval contrary to admissible strength of the teachers on establishment of the Respondent No. 4 School. So also, there were no reasons for withholding salary of the Petitioner, as the Petitioner's appointment was against the sanctioned post. As per approved staffing pattern, only one post of trained graduate teacher was available and Mr. Sugare Dhondiram Vilasrao was already appointed against the said post. Only 7 posts

of Assistant Teachers and one post of Headmaster are sanctioned and admissible for grants. Since, the appointment of Respondent No.5-Balbhim Tukaram Rathod is against the unaided post, therefore, the Respondent No. 2 ought to have rejected the approval to the appointment of the Respondent No. 5, hence, submits for passing suitable orders.

8. The learned counsel for the Respondent Nos. 3 & 4 relied on Judgment dated 04.07.2019 passed by Co-ordinate Bench of this Court in **Writ Petition No.1493/2018 (Suryakant Janardhan Muge V/s. The State of Maharashtra and ors.)**, wherein it has been held that, if the Assistant Teacher on unaided post has worked for last more than 3 years and is transferred to the aided post, then he will have to work as Shikshan Sevak till he completes 3 years of service from the date of his initial appointment on unaided post that would be in conformity with the scheme of Shikshan Sevak framed by the State.

9. Adv. R.D. Biradar, the learned counsel for Respondent No.5 submits that, Respondent No. 2 approved the staffing pattern for the academic year 2011-2012, wherein out of 8 posts, 1 post of Teaching staff of Graduate Teacher for Primary section was approved. At the time of appointment, Respondent No. 5 was only graduate candidate and the Petitioner was HSC D.Ed. Therefore, the Respondent No. 2 Education Officer, granted approval for appointment of

the Respondent No.5 on 01.05.2012 on 'No Grant' basis and after completion of probation period, the Respondent No. 5 granted approval w.e.f. 14.11.2013 on 'No Grant' basis being graduate primary Teacher. Further, as per GR dated 29.12.2015, Respondent No.5 was granted pay scale w.e.f. 01.06.2019 on 20% Grant-in-aid basis, because Respondent no. 5 was only eligible. The Petitioner was not qualified for the post of primary graduate teacher, therefore he is not entitled for the pay scale of primary graduate teacher. Respondent No. 5 belongs to VJNT category and out of 8 posts, 1 post was reserved for primary graduate under VJNT category. Respondent No. 3 Management submitted the proposal for regularizing appointment of Respondent No. 5. On 29-11-2012, the Respondent No. 1 State Government granted step by step grant-in-aid 20% to various Schools and name of Respondent No. 4 School appeared at serial No. 180. The approved post of teacher in 20% aid are 7 post for HSC., D.Ed and 1 post for Primary Graduate. On 15.03.2013, the Deputy Director of Education issued a communication and approved 8 posts i.e 7 posts of D.Ed category and 1 post for Graduate Category, however, no approval was granted on grant-in-aid basis. Therefore, on 11.12.2018, Respondent No.5 submitted the representation for inclusion of his name in the Shalarth ID. On consideration of the Petitioner's grievance, the Respondent No. 2 Education Officer, granted approval for appointment of the Respondent No. 5 in 20% Grant-in-aid basis, which is legal, just and proper, hence, prayed for dismissal of the petition.

10. Having regard to the rival submissions canvased on behalf of the respective parties, we have gone through the record. It is not in dispute that, allocation of 20 % to 100 % grant in aid to the Respondent No. 4 School by the State Government. It is also not in dispute that, on 11.06.2011, the Petitioner was appointed as an Assistant Teacher with the Respondent No. 4 on probation for 2 years and posted with the Respondent No. 4 School against vacant and sanctioned post. At the time of appointment, the Petitioner was having HSC, D.Ed.. On 20-04-2012, the Respondent No. 2 Education Officer, granted approval to the appointment of Petitioner on No Grant basis. Later on in the year 2015, the Petitioner completed B.A. However, Respondent No. 5 was B.A. B.Ed., and appointed with the Respondent No. 4 School on 14.11.2011 being a Graduate Primary Teacher on No grant basis. The appointment of Respondent No. 5 was duly approved by Respondent No. 2 on 04.05.2012 on proposal submitted by the Respondent No. 3 Management.

11. Needless to say that, on 15.03.2013, the Deputy Director of Education approved teaching staffing pattern of the Respondent No. 4 School, wherein total 8 posts were approved out of which 7 posts of D.Ed category and 1 (one) Post for Graduate Category is sanctioned. As per 100% roster points, one post each is reserved for SC, ST, and VJNT. The Petitioner belong to VJNT and Respondent No. 5 belong to VJ (A) category. The Respondent No. 4 School

started getting 20% grant in the year 2012-2013. Since, the Petitioner completed probation period, therefore, on 22.07.2014, the Respondent No. 2 granted approval to the Petitioner being permanent employee w.e.f. 11.06.2013 on 20% partial grant-in-aid from June, 2012. At the time of appointment, the Respondent No. 5 was only graduate candidate, therefore, he was appointed being a Graduate Primary Teacher and the Petitioner was HSC D.Ed., therefore, he was appointed being a Assistant Primary Teacher. Therefore, it is clear that, on the date of appointment the Petitioner was not senior to Respondent No.5. The Respondent No.2 Education Officer granted approval to the appointment of Respondent No. 5 on 01.05.2012 on No Grant basis and after completion of probation period, service of Respondent No. 5 was regularized permanently w.e.f. 14.11.2013 being graduate primary Teacher. Since the Petitioner did not possess B.A., degree as on 29.11.2012 i.e. on the day on which allocation of 20% grant made applicable. Therefore, the Petitioner is not entitled to receive continuous salary being a graduate Primary Teacher.

12. No doubt, as per the view taken in case of **Suryakant Janardhan Muge** (supra), if the Assistant Teacher on unaided post has worked for last more than 3 years and is transferred to aided post, he will have to work as Shikshan Sevak till he completes 3 years of service from the date of his initial appointment on unaided post in conformity with the scheme of Shikshan Sevak

framed by the State. However, in the case in hand, Respondent No. 5 was not directly appointed on 100% grant in aid post and his initial appointment is being a Graduate Primary Teacher on unaided post with the Respondent No. 4, hence, appointment of Respondent No. 5 cannot be termed as direct appointment to the said post. Therefore ratio laid down in cited case is not applicable to the facts and circumstances of this case.

13. On perusal of impugned order dated 08.11.2016 (Annex.I), it *prima facie* appears that, the Respondent No. 2 Education Officer passed an order in reference to proposal dated 07.10.2016 submitted by Respondent No. 3 seeking approval to the appointment of one Dhondiram Vilas Sagare being graduate primary teacher. Accordingly, Respondent No. 2 granted approval. On 26.06.2019, Respondent No. 2 issued a communication while granting permanent approval to Respondent No. 5 considering the fact that, he was only B.A., B.Ed. graduate candidate, therefore, sanction was accorded in pay scale of Rs. 9300-34800 w.e.f. 14.11.2011 on probation of 2 years and on completion of probation period, the appointment of the Respondent was approved on no-grant basis w.e.f. 14.11.2013. Further, as per reference No. 4 i.e. Resolution No. 3218/2018 dated 14.09.2018 passed by Respondent No. 3 Management, Respondent No. 5 was the sole Graduate Teacher candidate from VJ (A) category. Therefore, as per Government Resolution, 20% grant was sanctioned

to the 7 Assistant Primary Teacher and 1 Graduate Primary Teacher. Further as per reference No. 6, the post of Graduate Primary Teacher was directed to convert in grant in aid, however, proposal for approval was submitted in respect of the Petitioner instead of Respondent No. 5, though the Petitioner was D.Ed. and Respondent No.5 was B.A. and B. Ed.. Therefore, on 26.06.2009, Respondent No. 2 passed the impugned order and granted permanent approval to the appointment of Respondent No. 5 on 20% grant-in-aid basis w.e.f. 14.11.2013 i.e. on completion of 2 years probation period, which certainly appears legal, just and proper. Therefore, we do not find merit in this petition.

14. In view of above discussion, **present petition is dismissed.** Accordingly, Rule is discharged.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]