



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13622 OF 2021

Amit s/o Ashokrao Borgaonkar,
Age: 32 years, Occu.: Service,
R/o. Borgaon, Tq. Tuljapur,
Dist. Osmanabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Secondary & Higher Secondary,
Latur Division Latur, Dist. Latur.
3. The Education Officer (Secondary),
Osmanabad, Dist. Osmanabad.
4. The President/Secretary,
Jai Bhavani Shikshan Prasarak Sanstha,
Borgaon, Tq. Tuljapur,
Dist. Osmanabad.
5. The Head Master,
Hutatma Baburao Borgaonkar Vidyalyaya,
Borgaon, Tq. Tuljapur, Dist. Osmanabad.

.. RESPONDENTS

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Mr. D. S. Mali, Advocate for the petitioner.
Mr. K. S. Patil, AGP for respondent Nos.1 to 3 – State.
Mr. V. D. Gunale, Advocate for respondent Nos.4 and 5.

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

DATE : 15th APRIL, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. Present petition has been filed to challenge the impugned order dated 26.10.2021 passed by respondent No.3 Education Officer (Secondary) and for release of payment of salary to the petitioner as Junior Clerk from 07.10.2019 with consequential benefits.

3. Heard learned Advocate Mr. D. S. Male for the petitioner, learned AGP Mr. K. S. Patil for respondent Nos.1 to 3 – State and learned Advocate Mr. V. D. Gunale for respondent Nos.4 and 5. Perused the documents on record as well as affidavit-in-reply filed by Gajanan Sugdeo Susar, Education Officer (Secondary), Zilla Parishad, Osmanabad.

4. The petitioner has come with the case that respondent No.5 School has one sanctioned post of Junior Clerk. It became vacant due to the retirement of the earlier Junior Clerk on 31.01.2019. It was the single post and, therefore, there was no question of reservation policy. The roster was approved by Divisional Commissioner. Respondent No.4 institution has filed an application to respondent No.3 seeking permission to issue advertisement to fill up the said post of Junior Clerk. The said letter was given on 29.08.2019. The No Objection Certificate was not granted by respondent No.3 for about eight

months. In the meantime, no surplus employee was provided by respondent No.3 for the said post. Thereafter, the advertisement was issued on 13.09.2019 and the selection process was undertaken. Petitioner came to be selected and appointment order was passed in his favour on 07.10.2019. Proposal was given for grant of approval to the appointment of the petitioner on 20.09.2021, however, it has been rejected on some flimsy grounds by quoting Government Resolution dated 04.05.2020. The said order is illegal and could not have made applicable the Government Resolution dated 04.05.2020 to the appointment of the petitioner retrospectively.

5. In the affidavit-in-reply, same facts have been reiterated. It has been further stated that as per Government Resolution dated 07.03.2019 and the norms laid down in Government Resolution dated 28.01.2019, the Government of Maharashtra had directed the Director of Education, Secondary and Higher Secondary, Maharashtra State, Pune to allot/sanction the admissible posts. It is stated that in view of the said Government Resolutions, the budgetary provision to the sanctioned post in the aided schools and partially aided schools should be verified as per the strength of the students, which was not done in this case.

6. The facts are very much clear and not disputed. Permission was sought by communication dated 29.08.2019 from the Education

Officer to fill up the vacant post. The No Objection certificate was not given by respondent No.3. The communication dated 29.08.2019 has acknowledgment of the office of respondent No.2. We would like to rely on the decision in **Gopal Siddheshwar Akhade and Ors. Vs. State of Maharashtra and Ors., [MANU/MH/2590/2013]** and our own decision in **Tukaram Bharat Dudile and another Vs. The State of Maharashtra and others, [Writ Petition No.3098 of 2017 decided on 31.01.2024]** to support that when the respondent authorities who received the application for No Objection Certificate for issuing advertisement and it has not responded and pursuant to that communication if the advertisement is given, then the appointment so made on the basis of those advertisements were required to be held as per the procedure. When the fact was informed to respondent No.3 that the post has become vacant, then respondent No.3 ought to have taken up steps for absorption of the surplus employee/candidate. Waiting for eight months by the education institution was quite a sufficient compliance of the Government Resolution. Now, respondent No.3 cannot blame that there were surplus employees. We reiterate that mere statement is not sufficient, but giving of data in the affidavit-in-reply is mandatory to support the contention that there is no compliance with the Government Resolutions by the educational institution. As regards other Government Resolutions also, mere mention of the same in the affidavit-in-reply is not sufficient. Under the said circumstance, the

alleged reasons given for not granting approval deserves to be set aside. Hence, the following order :-

ORDER

- I) The Writ Petition stands allowed in terms of prayer clauses 'B' and 'C'.
- II) The release of salary of the petitioner as a Junior Clerk from 07.10.2019 should be in phased manner to be divided between two equal installments of having duration of six months and the first installment would be due on 10.05.2024.
- III) Rule is made absolute in the above terms.
- IV) No order as to costs.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm