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wp 12479.23 R.odt

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

WRIT PETITION NO. 12479 OF 2023

Smt. Jyoti s/o. Parashram Hon
Age 44 years, Occ. Service,
r/o. Shenvadgaon, Tq. Rahuri,
Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra
through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai – 400 032.
2. The Education Officer (Primary)
Zilla Parishad, Ahmednagar,
District Ahmednagar.
3. Shri Shivaji Shikshan Prasarak Mandal,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar through its Secretary.
4. Shivaji Prathamik Vidhyalay
Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar
through its Head Master.

.. Respondents.

Mr. A.D. Shinde, Advocate for the petitioner
Mrs. Kalpalata Patil Bharaswadkar, AGP for respondent No. 1
Mr. A.D. Aghav, Adv. For respondent No. 2
Mr. A.V. Hon, Advocate for respondent Nos. 3 and 4.

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

RESERVED ON : 3rd APRIL, 2024
PRONOUNCED ON : 22nd APRIL, 2024.

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. The petitioner approached this Court under Article 226 of the Constitution of India impugning order dated 11.9.2023 passed by the Education Officer (Primary) Zilla Prishad, Ahmednagar – respondent No.2, thereby rejecting the proposal seeking approval to the appointment of the petitioner on the post of Shikshan Sevak.

2. The petitioner contends that in pursuance of advertisement issued by the respondent No.3, she has been appointed as Shikshan Sevak vide order dated 8.12.2014 on establishment of respondent No.4 School. The proposal for grant of approval to her appointment was forwarded by the respondent No. 4 to the respondent No.2. However, same is rejected giving reason that advertisement was issued without obtaining permission from education officer.

3. The petitioner contends that in all 5 appointments were made in pursuance of the said advertisement along with the petitioner. The proposals seeking approval to all those appointments were declined by Education officer. Pursuant to rejection of the proposal, respondent Nos. 3 and 4 had terminated the services of all the 5 teachers including the petitioner. The other 4 teachers had approached the School Tribunal assailing the termination order. However, School Tribunal was pleased to dismiss the appeal. The School Tribunals orders passed in respective appeals were assailed before this Court in W.P. No. 10834 of 2018 and

companion matters. This Court while allowing petitions observed that appointment of the teachers were made in tune with the provisions of Maharashtra Employees of Private School (Conditions of Service) Regulation Rules, 1981 (hereinafter “MEPS Rules”). Consequently, set aside the termination orders and directed reinstatement of those petitioners. Further, the Education Officer was directed to grant approval to those appointments. It is further contended that the petitioner had also assailed Termination order before this Court by filing W.P. No. 582 of 2022. However, her writ petition was disposed of with liberty to approach the School Tribunal. Consequently, petitioner had filed Appeal No. 20 of 2022 before the School Tribunal, which came to be allowed directing petitioners reinstatement by setting aside the termination order. Consequently, vide order dated 30.12.2022 respondent No.3 management reinstated the petitioner. The proposal for approval to her appointment was forwarded to the Education Officer. However, vide impugned order dated 11.9.2023, the Education Officer declined to grant approval. Hence, the present writ petition.

4. Respondent No.2 – Education Officer filed reply contending that there is no vacant post available on the establishment of respondent No.3 – School to accommodate the petitioner. In year 2018, one post of Assistant Teacher is reduced. All the available posts are already occupied by the employees working on the establishment of respondent No.3. As such, respondent No.2 justified his order.

5. Respondent Nos. 3 and 4 filed affidavit in reply contending that after termination of the petitioner’s services, surplus teachers have been accommodated as per directions given by the Education Officer.

Petitioner's services can be approved by adjusting/repatriating the surplus teachers to their original schools and petitioner can be given precedence in terms of Rule 26(3) and (4) of the MEPS, Rules, 1981.

6. We have heard Mr. A.D. Shinde, the learned advocate for the petitioner; Mrs. Kalpatalata Patil Bharaswadkar, learned AGP for respondent No.1; Mr. A.D. Aghav, for respondent No.2 and Mr. A.V. Hon, learned advocate for respondent Nos. 3 and 4.

7. We have perused the documents annexed to petition and affidavits in reply tendered on behalf of respondent Nos. 2 to 4. It is not in dispute that the petitioner was appointed on 8.12.2014 as Shikshan Sevak alongwith other 4 teachers in pursuance of the advertisement and recruitment process conducted by respondent Nos. 3 and 4.

8. Since Education Officer declined to grant approval to their appointment, services of all 5 teachers including the petitioner were terminated by the management. The other 4 teachers except the petitioner had approached the School Tribunal assailing the termination. But, School Tribunal had rejected appeals. However, in writ petition filed against said orders of the School Tribunal, this Court directed reinstatement of those teachers, upholding the validity of their appointments and also directed the Education Officer to grant approval to their appointments. Consequently, the petitioners in those writ petitions have been reinstated in service and the Education Officer has granted approval to their appointments. Although the petitioner approached School Tribunal belatedly, the order has been passed thereby setting aside her termination with consequential direction of

reinstatement in service. In deference to order of Tribunal, management passed resolution dated 30.12.2022 and reinstated the petitioner. However, proposal seeking approval, forwarded to the Education Officer came to be rejected under impugned order dated 11.9.2023 with following stipulations :-

- [i] No permission was obtained from the Education Officer ;
- [ii] The appointment is made ignoring the ban on recruitment imposed since 2012. The advertisement was given in local newspaper and not in widely circulated news paper;
- [iii] The petitioner does not comply with the requirement of TET qualification in terms of Government Resolution dated 13.2.2013.
- [iv] The reservation roster was not updated during the three years preceding the date of advertisement;
- [v] At present, no vacancy is available in the School.

9. It is a matter of record that petitioner was appointed in the year 2014, however, her appointment was not approved by the Education Officer. The Education Officer had adopted similar reasons while rejecting previous proposal approval. However, this Court in W.P. No. 19834 of 2018 and companion matters, approved legality of advertisement and selection process conducted by management. Consequently, ordered reinstatement of other 4 teachers appointed under same selection process. Even the School Tribunal, while setting aside the

termination of petitioner, made similar observations and approved legality of her selection. Now, management has accepted the verdict of the school tribunal and reinstated the petitioner. In this background, the reasoning adopted by the Education Officer in impugned order dated 11.9.2023 cannot be countenanced. The Education Officer appears to have made attempt to replace his opinion against the judicial pronouncements by the School Tribunal as well as this Court pertaining to the procedure of appointment adopted by respondent Nos. 3 and 4.

10. So far as second reason recorded in impugned order, that no post is available on the establishment of respondent No.4 school, it can be observed that the availability of vacancies in the school as on date of petitioner's appointment will have to be taken into account. The petitioners reinstatement in service will relate back to the order of termination. The School Tribunal has quashed and set aside the termination order and directed reinstatement of the petitioner with all consequential benefits. Resultantly, any other appointment made or any other surplus teacher accommodated against the vacancies, pursuant to petitioner's termination, cannot override her right. Consequently, the Education Officer ought to have examined the staffing pattern and availability of posts as on the date of petitioner's appointment or at the most, on the date of her termination in the year 2016.

11. Perusal of the affidavit in reply filed on behalf of the Education Officer shows that, at the time of publication of advertisement on 29.11.2014, pursuant to which the petitioner has been appointed, there were five vacancies, out of 12 sanctioned posts as per the staffing pattern. It appears that in 2018-19, one post has been reduced.

Meanwhile, some more vacancies arose because of the retirement of teachers and 2 posts were filled in by way of absorption. The other 4 teachers, who are similarly situated as that of the petitioner, are granted approval on their reinstatement. The surplus teachers are posted against reserved category like Scheduled Caste and OBC. As such, there is no vacancy of any reserved post.

12. As observed in the aforesaid paragraphs, subsequent developments regarding accommodation of the surplus teachers during the year 2016-2019 cannot supersede petitioner's right accrued in view her reinstatement under orders of the School Tribunal. Her reinstatement will relate back to the date of termination. In fact, the petitioner would have precedence over the subsequent appointments made on establishment of the School in terms of Rule 26(3)(4) of the MEPS Rules, 1981. Therefore, subsequent appointment or accommodation of surplus teachers cannot posed as impediment to grant approval to petitioners appointment. It is for the Education Officer to take appropriate steps and make space for accommodation of petitioner and grant approval appointment. Consequently, writ petition succeeds. We proceed to pass the following order :-

ORDER

[A] Writ Petition is allowed;

[B] The impugned order dated 11.09.2023 passed by respondent No.2 – Education Officer (Primary) Zilla Parishad, Ahmednagar is quashed and set aside;

[C] Respondent No.2 shall grant approval to the petitioner's appointment as Shikshan Sevak from 8.12.2014 with all consequential benefits, subject to condition that the petitioner furnishes an undertaking that she would abide by the decision of the Apex Court in respect of TET Qualification, as has been directed in the order dated 2/12/2021 while granting approval to the appointment of the other 4 teachers , in pursuance of the order passed in W.P No. 10834 of 2018 alongwith companion matters.

[D] Writ petition stands disposed of in above terms.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-