



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 13726 / 2023

Nagesh s/o Sopanrao Bangar,
Age 33 years, Occu. Service
as Assistant Teacher, Bhagwan
Vidyalaya, Dhanora Road, Beed,
R/o: 'Saikrupa', Mitra Nagar,
Beed, District Beed.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. Bhagwan Vidya Prasarak Mandal,
Dhanora Road, Beed
Through its Secretary.
3. The Headmaster,
Bhagwan Vidyalaya, Dhanora Road,
Beed, District Beed.
4. The Education Officer (Secondary)
Zilla Parishad, Beed.

...Respondents

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Mr. S. R. Barlinge, Advocate for the Petitioner.

Mr. N.D. Batule, AGP for Respondents/State.

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 08 JULY 2024

FINAL ORDER [Per: Shailesh P. Brahme, J.] :

. Heard both the sides finally at the admission stage.

2. Initially petitioner solicited direction to decide proposal seeking approval to his appointment which was pending before the respondent no.4/Education Officer. During pendency of the matter, Education Officer rejected the proposal vide order dated 02.11.2023. By way of amendment, the petitioner has prayed for quashment of the order dated 02.11.2023 on the basis of amended pleadings and the documents.

3. It is a case of the petitioner that he was appointed on unaided post of the respondent no.3/school vide order dated 01.07.2019. His proposal seeking approval to the appointment was rejected on the ground that the appointment was not made as per the procedure of Pavitra Portal contemplated by G.R. dated 23.06.2017 and 07.02.2019. Learned Counsel would submit that there was undue delay in deciding the proposal when twice this Court issued direction to decide the proposal. It is further submitted that impugned decision is against law laid down in the matter of Shikshan Prasarak Mandal and Others Vs. Deputy Director of Education, Amravati and Anr., Writ Petition No.5245/2018 with connected matters and Anil Janardhan Sarkate and others Vs. State of Maharashtra and Others, Writ Petition No.512/2022.

4. Learned AGP appearing for respondents/State opposes the petition. He would justify the decision as the appointment was not as per Pavitra Portal. Additionally, it is being pleaded in the affidavit-in-reply that the newspaper 'Jan-Ankush' wherein advertisement was published was not having wide circulation and no prior permission was solicited before advertising the post.

5. The proposal of the petitioner has been rejected only on the ground that procedure contemplated by G.R. dated 23.06.2017 and 07.02.2019 has not been followed. Other reasons for rejecting approval that there was no prior permission and advertisement was not published in widely circulated newspapers, are not spelt out in the impugned order. It is not permissible for the learned AGP to supply the reasons by way of affidavit for the first time which is against law laid down in the matter of **Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.**, AIR 1987 SC 851. Hence we are not entertaining those reasons.

6. Learned Counsel for the petitioner has referred to a judgment of coordinate bench rendered in the matter of **Lalit Sureshrao Shinde Vs. State of Maharashtra and Others**, Writ Petition No.14420/2021 to buttress his submission that proposal cannot be rejected for non-observance of the procedure of Pavitra Portal. We have also taken same view in the matter of **Shaikh Jaweria**

Khadarsab Vs. State of Maharashtra and Others, Writ Petition No.13150/2022. It has been laid down that procedure of Pavitra Portal has not been put to desired use and the appointment cannot be faulted on the sole ground. We, therefore, directed Education Officer therein to conduct afresh scrutiny of the proposal.

7. In the present case also, we do not find any objective scrutiny by the Education Officer for considering proposal of approval. In view of law discussed in above paragraphs, we are of the considered view that matter needs to be remanded to the Education Officer for consideration afresh.

8. (i) We, therefore allow the writ petition partly.

(ii) The order dated 02.11.2023 passed by respondent no.4/Education Officer is quashed.

(iii) The respondent no.4/Education Officer shall reconsider the proposal of the petitioner on its own merits. However it shall not be rejected for the reasons stated in the impugned order.

(iv) The decision shall be taken within a period of four weeks from today.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

Rejeed...