



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13469 OF 2018

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Gajanan s/o Nagorao Rajure,
age 34 years, Occ. Service,
R/o Jija Mata Prathamik School,
Phule Nagar, Mukhed,
Tq. Mukhed, District Nanded. Petitioner.

Versus

1. The State of Maharashtra,
Through it's Secretary,
Department of School Education,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded,
District Nanded.
4. Peoples Education Society,
Deli (Kd), Tq. Mukhed,
District Nanded through
It's Secretary.
5. The Head Master,
Jija Mata Prathamik School,
Phule Nagar, Mukhed,
Tq. Mukhed, District Nanded. Respondents.

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Mr. G.J. Karne, Advocate for petitioner.
Mr. S.K.Shirse, AGP for respondent nos.1 and 2.
Mr. S.B. Pulkundwar, advocate for respondent nos.3
Mr. R.G. Tupe h/f Mr. S.P. Sonwane advocate for Respondent
nos.4 and 5.

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CORAM	:	SMT. VIBHA KANKANWADI & S. G. CHAPALGAONKAR, JJ.
Reserved on	:	03 rd April, 2024
Decided on	:	22 nd April, 2024

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JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The petitioner has approached this Court under Article 226 of the Constitution of India, thereby assailing the order dated 18.11.2018 passed by the Education Officer (Primary) – Respondent no.3, declining to grant approval to his appointment as ‘Shikshan Sevak’ in Respondent No.5-School.

3. Mr. G.J. Karne, learned advocate appearing for the petitioner submit that petitioner belongs to NT category and holds qualification as H.SC. D.Ed. He was eligible to be appointed as ‘Shikshan Sevak’ in the primary school. Respondent no.4-Society runs Respondent no.5-School. They issued an advertisement dated 2.6.2008 inviting applications from eligible candidates for appointment of ‘Shikshan Sevak.’ The petitioner, being eligible and qualified, responded to the advertisement and undergone the selection process. He being meritorious and suitable candidate, respondent no.4 issued appointment order in his favour. The petitioner joined services immediately i.e. w.e.f. 8.6.2008. Respondent no.5 forwarded the proposal dated 27.12.2010 to the office of Respondent no.3 seeking approval to the petitioner’s appointment. Since, the

proposal was kept pending, the petitioner had approached the Grievance Committee by filing Appeal No.6 of 2012 and sought directions for grant of approval to his appointment. The Grievance Committee allowed the appeal and issued directions to the Education Officer, as prayed. Despite of such directions, the Education Officer sat over the file without taking any decision. The petitioner was, therefore, forced to approach this Court vide Writ Petition no.11474 of 2014 raising his grievance against inaction on the part of the Education Officer. This Court, after considering plight of the petitioner, issued directions to decide pending proposal expeditiously and preferably within the period of four months after receipt of order of this Court. Thereafter, Respondent no.3, passed the impugned order dated 18.11.2018 and declined to grant approval to the petitioner's appointment.

4. Mr. Karne, learned advocate appearing for the petitioner would further submit that the impugned order sans reasons and does not consider the position as on date of the petitioner's appointment. Reference to various Government Resolutions in the impugned order would show that the decision is made on the basis of policy of the State, which is brought in vogue subsequent to petitioner's appointment. He would therefore urge to allow the writ petition.

5. Mr. S.K. Shirse, learned AGP appearing for respondent nos.1 and 2 and Mr. S.B. Pulkundwar, learned advocate appearing for respondent no.3 supports the order. Mr. Pulkundwar, learned advocate appearing for respondent no.3, by referring to the contents of the affidavit-in-reply of Mr.

Prashant Digraskar submit that the petitioner's appointment is inconsistent with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service), Regulation Act and the Rules. No permission was obtained from the office of respondent no.3 before issuance of the advertisement. Such advertisement was not published in widely circulated newspaper. Large number of surplus teachers are available for absorption. The Management had never made communication regarding vacancy on establishment of the school.

6. Mr. Pulkundwar, would invite attention of this Court to the previous orders dated 16.7.2019, 13.8.2019 and 18.9.2019 passed in this Writ petition, whereby the petitioner was called upon to furnish the documents indicating communication with the office of the Education Officer seeking permission to advertise the post as well as approved reservation roster. The petitioner has not complied with such directions. He would therefore submit that no fault can be found in the impugned order.

7. We have considered submissions advanced on behalf of the respective parties. We have perused the record tendered into service. The record shows that the petitioner holds the qualification as H. Sc. D.Ed. As such, eligible to be appointed as non-graduate teacher. The respondent nos.4 and 5 appears to have issued an advertisement in daily Newspaper namely '*Nandedsan*' dated 2.6.2008 thereby inviting applications from the eligible candidates. In all two posts appears to have been advertised. One post is reserved for ST/NT. The petitioner's appointment is against the reserved

post. The staffing pattern dated 17.8.2010 approved on the basis of inspection report dated 22.8.2008 for academic year 2008-2009 depicts that three posts of primary teacher and a post of Head Master were sanctioned at respondent no.5 School. It is true that reservation roster approved by backward cell is not available on record.

8. Mr. Karne, learned advocate appearing for the petitioner submit that although, attempt was made by respondent no.5 to get approved reservation roster from the office of the Divisional Commission (Backward Cell), due to directives under Government Resolution dated 22.8.2019, the concerned officer refused to issue approved roster. Mr. Karne has also invited our attention to the seniority list of the teachers working in the school and points out that only one post is filled in from open, other posts are filled in through the candidates from different reserved categories.

9. Apparently, Education Officer sat over the proposal seeking approval to the petitioner's appointment from 2010 onwards. Although, the Grievance Committee had issued directives to grant approval to the appointment of the petitioner, the Education Officer ignored the same. It is only after the directions given by this Court vide order dated 8.8.2018 in Writ Petition no.11474 of 2014, the Education Officer moved the file and passed the impugned order.

10. Perusal of the impugned order shows that it simply refers to various Government Resolutions issued from 2012 to 2016 and declines approval stating that the petitioner's case

cannot be considered in light of the directives under those Government Resolutions. No specific reason is recorded in reference to the stipulations in referred Government Resolutions. Apparently, the order is passed without application of mind in attempt to depict technical compliance of directions of this Court in the order dated 8.8.2018. Such practice needs to be deprecated. When this Court had issued directions to decide pending proposal, the Education Officer was under obligation to apply his mind to the proposal in light of the documents annexed thereto and applicable provisions of law and policy brought in vogue under various Government Resolutions. Pertinently, the petitioner is appointed in the year 2008. It was obligatory on the part of the Education Officer to apply parameters as it stands on the date of petitioner's appointment. Subsequent Government Resolutions issued from 2012-2016 could not have been applied retrospectively while considering the proposal for approval to the appointment made in the year 2008.

11. In that view of the matter, we deem it proper to quash and set aside the impugned order and relegate the matter for re-consideration to the Education Officer in light of the aforesaid observations. Consequently, we proceed to pass the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 18.11.2018 passed by the Education Officer (Primary), Zilla

Parishad, Nanded is hereby quashed and set aside.

- iii. The Respondent No.3- Education Officer (Primary), Zilla Parishad, Nanded shall re-consider proposal for grant of approval to the petitioner's appointment dated 10.6.2008 on the post of 'Shikshan Sevak' with respondent no.5 School on the basis of the Rules, Regulations and Policy as on the date of the petitioner's appointment.
- iv. While considering such proposal, the staffing pattern and reservation roster as applicable on the date of appointment of the petitioner shall be relevant.
- v. In case, approved reservation roster as on the date of the petitioners appointment could not be made available due to technical reasons, the Education Officer shall take his decision without insisting for the same.
- vi. Such decision shall be taken within the period of three (3) months from the date of this order.
- vii. The petitioner and respondent nos.4 and 5 shall be at liberty to place on record the

relevant documents in support of the proposal.

- viii. The Respondent No.3 - Education Officer may call upon the respondent nos.4 and 5 to furnish the requisite documents by written notice.
- ix. Respondent nos.4 and 5 shall be under obligation to furnish the documents within the stipulated period as indicated in the communication issued by the respondent no.3.
- x. Writ Petition stands disposed off in aforesaid terms. Rule is made absolute. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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