



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12311 OF 2016**

Smt. Jayashri D/o Nilkanthrao Bindu,
Age: 36 Years, Occ.: Service,
R/o. At Post Nilanga, Tq. Nilanga,
Naik Galli, Near Vitthal Mandir,
Tq. Nilanga, Dist. Latur

..Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
School Education and Sports. Department
Manatralaya, Fort, Mumbai-32
2. The Education Officer (Primary),
Zilla Parishad, Latur District: Latur,
3. Shri Shivaji Shikshan Prasarak Mandal,
Nilanga, District: Latur,
Through its Secretary,
4. Shri Shivaji Prathamik Vidya Mandir,
Nilanga, District: Latur,
Through its Head Master.

..Respondents

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Mr. A. R. Nikam, Advocate for the Petitioner.
Mr. P. S. Patil, AGP for Respondent Nos.1 and 3.
Mr. U. B. Bondar, Advocate for Respondent No.2.
Mr. V. S. Panpatte, Advocate for Respondent No.4.

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

**JUDGMENT RESERVED ON :- 18th MARCH 2024.
JUDGMENT PRONOUNCED ON :- 28th MARCH 2024.**

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

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India thereby assailing order dated 12.12.2014 passed by respondent no.2-Education Officer (P), Zilla Parishad, Latur thereby declining to grant proposal to the appointment of the petitioner as an Assistant Teacher. The petitioner further seeks directions against respondent no.2-Education Officer to grant approval to his appointment as a Shikshan Sevak w.e.f. 02.01.2017 and consequential release of the salary dues.

3. The petitioner contends that he holds requisite qualification for the appointment as an Assistant Teacher i.e. B.A., D.Ed. The respondent no.4-School is receiving grant-in-aid from the State. One of the senior teacher namely Smt. Kewalbai Digambarrao Jadhav retired on 31.03.2013 on attaining the age of superannuation. The respondent nos.3 and 4 informed the Education Officer regarding retirement of Smt. Kewalbai Jadhav and sought permission to fill up the vacant post by issuing an advertisement. The said communication is duly acknowledged on 09.07.2013 by the office of the Education Officer. However, no response is given. Finally respondent no.3-Management issued an advertisement inviting applications from the eligible candidates. The petitioner responded to the said advertisement. She was interviewed by the School Committee. She being meritorious and eligible candidate, came to be appointed vide order dated 02.01.2014. The petitioner joined on the post w.e.f. 06.01.2014. The respondent no.4 forwarded proposal dated 13.02.2014 to the office of respondent no.2 seeking approval to the appointment. However, vide impugned communication, respondent no.2 declined to grant approval giving reasons that there was ban on recruitment in view of the Government Resolution dated 02.05.2012 and there

are surplus teachers in Latur district. Unless the surplus teachers are absorbed, the proposal for fresh appointment cannot be entertained. According to the petitioner, impugned order is unjust, arbitrary and contrary to the facts and law.

4. The respondent no.2-Education Officer filed affidavit-in-reply justifying the rejection of the proposal seeking approval to the appointment of the petitioner stating that the Management failed to obtain the permission from his office to fill up the post. The advertisement was issued without following due procedure. The ban imposed to the appointments was in operation and number of surplus teachers are yet to be absorbed. The teachers namely Smt. Sindhu Govindrao Deshmukh was sent for absorption with respondent no.4-School, but she was not allowed to join and proposal for approval of the fresh appointment has been forwarded.

5. We have considered the submissions advanced on behalf of the respective parties and we have perused the record. Apparently, the rejection of the proposal for grant of approval to the petitioner's appointment is twofold. Firstly, the permission was not sought before filling up the post and secondly, there was ban on the recruitment. The affidavit-in-reply filed on behalf of respondent no.4 shows that the communication dated 09.07.2013 was addressed to the office of respondent no.2 on behalf of the School intimating that on 31.03.2013 Smt. Kiwalbai Jadhav, Assistant Teacher has been retired and there is vacancy in the School. The permission was sought to publish an advertisement to fill up the vacancy. The said communication is duly acknowledged by the office of respondent no.2 on 09.07.2013. It bears the stamp and signature. It is not controverted on behalf of respondent no.2. Admittedly, there was no response from the office of respondent

no.2 to the aforesaid communication. Consequently, the Management issued an advertisement in the newspaper namely 'Ternatir'. The petitioner responded to the said advertisement. She was interviewed by the School Committee. She being meritorious and eligible candidate, the order of appointment has been issued to her. She joined her services immediately on 06.01.2014. Since then, she is discharging her duties. The proposal seeking appointment has been rejected.

6. It is not in dispute that the petitioner's appointment is against the vacancy arose on retirement of one Assistant Teacher working in the School. The Management had intimated such vacancy and sought permission for the advertisement. If the office of respondent no.2 has not responded or not recommended any surplus teacher for the appointment against vacancy, no fault can be found with the Management if they have issued an advertisement. The petitioner has accordingly responded and has been appointed being a qualified candidate.

7. Although, the reliance is placed on the Government Resolution dated 02.05.2012, it was for the Education Officer to respond to the communication made by the Management and make available surplus teacher. However, no such response was given by the Education Officer. If the Education Officer do not respond to the communication of the Management, then Management cannot be put at fault in advertising post and proceed to fill up vacancy in compliance of its obligation under Statutory scheme under Section 5 of the Act.

8. Pertinently, the appointment of the petitioner is against clear and vacant post, which was approved as per staffing

pattern on the establishment of the School. The petitioner is working since last 10 years, therefore, impugned order cannot be sustained in law. Consequently, we proceed to pass following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 12.12.2014 passed by respondent no.2-Education Officer (P), Zilla Parishad, Latur is hereby quashed and set aside.
- c. The respondent no.2-Education Officer shall reconsider the proposal seeking approval to the appointment of the petitioner taking into account the aforesaid observations and shall not reject on the basis of the reasons given in the impugned order.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE