



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.219 OF 2020

Shital Madhavrao Kamshette,
Age-33 years, Occu:Service,
R/o:C/o- S.S. Dange,
Near M.U. College, Nanded Road,
Udgir, Tq-Udgir, Dist-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32,
- 2) The Education Officer (Secondary),
Latur, Dist-Latur,
- 3) The Secretary,
Bharat Liberal Education Society,
Udgir, Tq-Udgir, Dist-Latur,
- 4) The Head Master,
Sangram Smarak Vidyalaya,
Tq-Udgir, Dist-Latur,
- 5) Garibe Virbhadra Shankar,
Age-Major, Sangram Smarak Vidyalaya,
Tq-Udgir, Dist-Latur.

...RESPONDENTS

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Mr. D.S. Mali Advocate for Petitioner.
Ms. M.N. Ghanekar, A.G.P. for Respondent Nos.1 and 2.
Mr. Umakant P. Giri Advocate h/f. Mr. L.H. Kawale Advocate
for Respondent Nos.3 and 4.
Mr. R.D. Biradar Advocate for Respondent No.5.

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

DATE OF RESERVING JUDGMENT : 26th MARCH 2024

DATE OF PRONOUNCING JUDGMENT : 15th APRIL 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. Present Petition has been filed to quash and set aside the order passed by respondent No.2 on 6th November 2019 refusing to grant permanent approval to the appointment of the petitioner as assistant teacher and to direct respondent Nos.1 and 2 to grant the said approval and to release the payment of salary to the petitioner as an assistant teacher.

3. The factual matrix leading to the Petition are that the petitioner is trained under-graduate teacher having qualification of H.S.C., D.Ed. Respondent No.4 school was having strength of 34 teachers, out of them, services of one Shri Chiwate were terminated and therefore, one post of assistant teacher became

vacant. Respondent No.4 had made communication for filling up the said post and then the petitioner came to be appointed as Shikshan Sevak, by following due procedure of law. The petitioner was initially appointed for three years as Shikshan Sevak i.e. from 30th July 2012 to 29th July 2015. The proposals were submitted for grant of approval to the appointment of the petitioner by respondent No.4 to respondent No.2, on 29th August 2013 and 16th July 2016. Respondent No.2 has not decided those proposals, therefore, the petitioner approached this Court by filing Writ Petition No.8305 of 2019 for directing respondent No.2 to decide those proposals. Accordingly, under the orders of this Court dated 8th July 2019, respondent No.2 was directed to decide those proposals within a time bound period. Then the impugned order has been passed on 6th November 2019. The proposal came to be rejected on the ground that there are six posts of assistant teachers vacant in respondent No.4 school, out of them five vacant posts are from backlog category and one post is vacant from the open category and that respondent No.5 who was the surplus teacher, has been sent in place of petitioner on 3rd September 2019, as he also belongs to the open category. According to the petitioner, the said order cannot be allowed to sustain as her appointment is

dated 30th July 2012 and the position on the date of appointment of the petitioner ought to have been considered. On the date of appointment of the petitioner one post from the open category was vacant and therefore, the appointment of the petitioner ought to have been approved.

4. Respondent No. 2 – Audumbar Sampatrao Ukirde, the Education Officer (Secondary), Zilla Parishad, Latur has filed affidavit-in-reply. He admitted that employee by name, Shri R.V. Chiwate from respondent No.4 school came to be terminated on 1st June 2012 and the petitioner is shown to be appointed from the open category as Shikshan Sevak from 30th July 2012. There was backlog of five posts from the reserved category and though one post from open category was vacant but one surplus teacher namely Shri Garibe Veerbhadra has been absorbed in the said school and therefore, he has justified the said impugned order.

5. Respondent Nos. 3 and 4 are relying on the affidavit-in-reply of Umesh Manikrao Patil, who is the secretary of respondent No.3. He has given the account as to how many teachers were working and the staffing pattern has been produced on record. He states that there was a post available from the open category on the date of appointment of the

petitioner. He also submits that though by virtue of the Government Resolution dated 2nd May 2012 there was ban on recruitment of Class A to D employees, but as regards the teachers who were teaching the special subjects like English, Mathematics and Science are concerned, there was no ban for their recruitment. The petitioner is teaching all the subjects to 5th to 7th standard including English and Mathematics and therefore, the appointment of the petitioner is not in violation of the said Government Resolution. Thereafter by communication dated 30th November 2013, the Government had given concession to those who have not taken no objection certificate for filling up the posts and who were appointed prior to Government Resolution dated 2nd May 2012 and they were required to make the said communication to the Deputy Director of Education and still approval can be granted.

6. Heard learned Advocate Mr. Mali for the petitioner, learned AGP Ms. Ghanekar, for respondent Nos.1 and 2, learned Advocate Mr. Giri holding for learned Advocate Mr. Kawale for respondent Nos. 3 and 4 and learned Advocate Mr. Biradar for respondent No.5.

7. At the time of submissions it has been now pointed out on behalf of respondent No.5 that though the proposal for grant of approval to the appointment of petitioner came to be rejected because of respondent No.5 to whom order to absorb in respondent No.4 school was issued on 3rd September 2019, but now by order dated 14th December 2023, respondent No.5 has been directed to be absorbed in another school by the Education Officer (Secondary). Respondent No.5 has placed on record photo copy of the said order dated 14th December 2023.

8. Thus, the perusal of the said order dated 14th December 2023 would show that now respondent No.5 has been adjusted in some another school. Therefore, now it has to be seen, as to whether the post from open category is still available with respondent No.4 school. Further, we are of the opinion that respondent No.2 was not justified in considering the order dated 3rd September 2019 regarding absorption of respondent No.5 in respondent No.4 school while considering the proposals those were submitted since 29th August 2013, for grant of approval to the services of the petitioner. In fact, before issuing order of absorption of respondent No.5 on 3rd September 2019, respondent No.2 ought to have cleared those proposals first and

then only ought to have seen whether respondent No.5 can be directed to be absorbed in respondent No.4 school or not. It appears that respondent No.2 has now realized his mistake and therefore, order dated 14th December 2023 has been passed. In view of this change in the circumstance, the impugned order deserves to be quashed and set aside and the matter is now required to be relegated again to respondent No.2 with specific directions. Hence following order is passed:-

ORDER

- (I) The Writ Petition is hereby partly allowed.
- (II) The impugned order dated 6th November 2019 passed by respondent No.2 is quashed and set aside.
- (III) The matter is now again relegated to respondent No.2. Respondent No.2 should decide the proposals dated 29th August 2013 and 16th July 2016, on its own merits, taking into consideration the position on the date of appointment of the petitioner by respondent No.3 in respondent No.4

school. Such decision be taken within a period of SIX WEEKS from today. Respondent No.2 should give an opportunity of hearing to the petitioner and respondent Nos. 3 and 4.

(IV) The decision so taken, should be communicated to the petitioner and respondent Nos. 3 and 4, within a period of one week from the date of taking such decision.

(V) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE