

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6849 OF 2019

- 1] Ms. Prajakta Mahadeo Pawar,
Aged 25 Yrs, Occ. Service,
A/P. Banali, Tal. Jath,
Dist. Sangli – 416 404.
- 2] Shri Banashankari Shikshan Prasarak
Mandal, Banali, Tal. Jath,
Dist. Sangli, Through its Secretary ... Petitioners

Versus

- 1] The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.
- 2] The Education Officer (Secondary),
Zilla Parishad, Sangli. ... Respondents

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Mr. Narendra V. Bandiwadekar, Senior Advocate, with Mr. Vinayak Kumbhar, Mr. Rajendra B. Khaire and Mr. Aniket S. Phapale i/b. Ms. Ashwini N. Bandiwadekar for the Petitioners.

Ms. A.A. Purav, AGP for Respondent No.1 - State.

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**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 18 July 2024.

JUDGMENT (Per : Nitin Jamdar, J.) :

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. Petitioner No.1 is working with Petitioner No.2- Educational Institution/ School as Shikshan Sevak. The Petitioners have challenged the order dated 1 April 2019 issued by Respondent No.2- the Education Officer (Secondary), Zilla Parishad, Sangli refusing to grant approval to the appointment of Petitioner No.1 as Shikshan Sevak in the School of Petitioner No.2.

3. Respondent No. 1 is the State of Maharashtra through the Secretary, School Education Department and Respondent No. 2 is the Education Officer (Secondary), Zilla Parishad, Sangli.

4. On 7 June 2017, Petitioner No.1 was appointed to teach the subject of mathematics and, accordingly, was appointed as Shikshan Sevak for three years. Petitioner No.1 joined the School on 15 June 2017. On 15 October 2018, the Head Master of the School, where Petitioner No.1 was working, submitted a proposal for approval of the appointment of Petitioner No.1 to Respondent No.2- the Education Officer. In the communication dated 15 October 2018, Respondent No.2- the Education Officer communicated deficiencies in the proposal. On 31 October 2018, the Head Master of the School, while submitting an explanation and necessary documents to Respondent No.2- the Education Officer, pointed out deficiencies had been removed. Thereafter, by the impugned order dated 1 April 2019, Respondent No.2-the Education Officer

informed the Petitioners that the proposal was rejected. Challenging this order, the Petitioners have sought the following relief in this petition :

“b] By a suitable writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned order dated 1.4.2019 (EXHIBIT -J) issued by the Respondent No.2 refusing approval to appointment of the Petitioner No.1 as Shikshan Sevak in the aided Secondary School of the Petitioner No.2, and accordingly the Respondent No.2 may be directed to grant approval w.e.f. 15.6.2017 and to release the grant-in-aid for payment of monthly honorarium from the said date of appointment, together with arrears”.

Reply affidavit is filed by Respondent No.2- the Education Officer.

5. We have heard Mr.Narendra V. Bandiwadekar, the learned Senior Advocate for the Petitioners and Ms. A.A.Purav, the learned AGP for the State.

6. The impugned order has given following reasons for rejection: (a) after examining the roster point, it was found that there was backlog of OBC and ST candidates and there was no open post available and therefore, the proposal cannot be accepted in view of Government Resolution dated 6 February 2012; (b) no permission was taken for advertisement as required under Government Resolution dated 6 February 2012 before filling up the post; (c) even

though surplus teachers were available and no fresh recruitment should be made unless they are absorbed, the appointment of Petitioner No.1 was made which is contrary to Government Resolution dated 2 May 2012 and Rule 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977; (d) resolution of Petitioner No.2- School is passed after the appointment of Petitioner No.1; (e) there are only two candidates that can be seen in the performance sheet; (f) in the interview sheet, the signature of the candidates is not seen; and (g) no objection certificate is not attached with the proposal.

7. The learned Senior Advocate for the Petitioners first submitted that deficiencies were informed to the Petitioners by communication dated 15 October 2018. These deficiencies were removed and informed to Respondent No.2- the Education Officer. However, new grounds have been taken in the impugned order, and even these new grounds are without any merit. Reply affidavit is only a narration of the grounds taken in the impugned order.

8. As regards the availability of backlog as per Government Resolution dated 6 February 2012, the following facts pleaded by the Petitioners have gone uncontroverted:-

a. The head of School at Banali retired on superannuation, and the senior-most teacher was promoted as headmaster who previously

taught mathematics, Another teacher retired who taught English. According to the school roster, verified by the Education Officer and the Deputy Director of Education, Kolhapur Region, there was a backlog of one post in the open category as well as for the reserved categories of Scheduled Caste and VJ (A). Consequently, the management opted to fill the vacancy by appointing a candidate from the mathematics open category. Petitioner No.2 requested the Education Officer to assign a surplus teacher (M.Sc., B.Ed) to the School at Banali for the mathematics position. An alternative request was made to grant permission to fill the vacancy by publishing an advertisement. However, there was no response from the Education Officer regarding the availability of a surplus teacher or the permission to publish the advertisement. As a result, Petitioner No.2 published advertisements in "Daily Mangalvedha Times" on May 21, 2017, and "Daily Mangalvedha Nagari" on May 25, 2017.

b. Through the advertisement, the candidates were called upon to attend an interview and submit a written application on June 5, 2017. Additionally, Petitioner No.2 requested the Employment Office, Sangli, and the Social Welfare Officer, Sangli, to recommend candidates with the required educational qualifications. There was no response or communication from these offices.

c. In response to the advertisement, two candidates, including Petitioner No.1, submitted applications for the mathematics teacher

position. No applications were received for the second post, which was reserved for ST/NT. These two candidates were interviewed by a committee of three members who evaluated their performance and assigned marks accordingly. Petitioner No.1 received the highest marks among the candidates and was subsequently selected and recommended for appointment.

9. Now turning to the grounds in the impugned order. The appointment of Petitioner No.1 was made with effect from 15 June 2017, and the extract of the roster was verified on 13 August 2016. Thus, it is clear that the said roster was verified much prior to the appointment, but still, in reason No.1, it is stated that the extract of the roster is of the date subsequent to the appointment. This clearly shows that Respondent No.2 has not properly applied his mind to the documents on record. Further, Petitioner No.1 belonged to the open category and was appointed in the vacancy, which was in deficit/ backlog for the open category per the said roster.

10. Regarding the contention regarding backlog, the appointment of Petitioner No. 2 was on 15 June 2017, and the extract of the roster was verified on 13 August 2016, just before the appointment. The Resolution was passed in the meeting held on 6 June 2017, and the extract of the Resolution was passed on 6 October 2018. However, Respondent No.2- the Education Officer, has mistakenly treated the date of Resolution as 6 October 2018 and,

therefore, has observed that the appointment of Petitioner No.2 is prior to the Resolution. It is, therefore, clear that the issue of backlog did not arise. As per this roster point, as verified, there was one vacancy for an open category and therefore, Petitioner No.2 came to be appointed.

11. The Division Bench of this Court in the case of *Smt. Milan Ramchandra Gawade and Others V/s. The State of Maharashtra and Another*¹ considered identical situation and has observed as under :

"7. We note that the impugned order is rendered only on the above ground, however, in the reply affidavit running in to 10 pages with annexures filed by the Assistant Director of Education, another ground is taken, that is, when there was backlog of reserved categories, the appointment could not have been made even though the appointment is in the Open Category. This objection is also contrary to the settled position of law. The Petitioners have categorically asserted that there was vacancy of the open category because of removal of one Mr.Desai. This factum is not controverted in the reply affidavit. The learned Single Judge of this Court in the case of The President, Sudhagad Education Society v. The Dy. Director of Education², has observed that merely because there is backlog for the reserved category that does not mean that for an appointment in the open category post, approval can be refused even though the post is available. This view taken by the learned Single Judge is

¹ Civil Writ Petition No. 1281 of 2018 dated 25 April 2024

² Writ Petition No.4635/2009 and another decided on 16 July 2009.

confirmed by the Division Bench in the order dated 5 May 2010 in Latest Patent Appeal No.63/2010 and others whereby the appeals were dismissed. Further it was confirmed by the Hon'ble Supreme Court by rejecting Special Leave Petitions of the State Government on 26 April 2011 both, on the ground of delay and on the merits. No contrary position of law is shown to us. The legal position which the Petitioner has placed on record by way of rejoinder is also not dealt with even though the decisions rendered in the year 2009 onwards are relied upon”.

12. On the question as to whether the surplus candidates are not being absorbed, the Petitioners have relied upon the decision of the Division Bench of this Court in the case of *Smt. Munoli Rajashri Karabasappa Versus State of Maharashtra Thru Secretary & Ors.*³ The Division Bench has observed as under :

"4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects of English, Maths and Science are concerned.

5. The Division Bench of this Court in the cases of Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr. has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfill the backlog of backward class candidates.

3 Civil Writ Petition No. 8587 of 2016 with connected Petitions dated 10 July 2017

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools cannot be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates.

8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not

expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the State exchequer will be burdened".

13. As stated earlier, the assertion of the Petitioners is that the Petitioners had called upon Respondent No.2- the Education Officer to furnish the names of surplus candidates, however, there was no response and has not been controverted in the reply affidavit. Similarly, the Petitioners had asked Respondent No.2- the Education Officer to grant permission to fill the vacancy by publishing an advertisement, but Respondent No.2-the Education Officer did not respond. In absence of any denial, we will have to proceed on the basis of this factual position. The law laid down in the decisions of *Smt. Milan Ramchandra Gawade and Others* and *Smt. Munoli Rajashri Karabasappa* thus will apply to the case of the Petitioners.

14. The next ground of rejection is that only two candidates were in the assessment sheet. The learned Senior Advocate for the Petitioners submitted that though this is correct, little turns on this aspect since the Respondents have not disputed the factum of issuance of advertisement, which was widely circulated in the newspapers and that they were only two candidates, who applied, will not vitiate the appointment. Again there is no answer to this submission. Therefore, this ground also does not survive.

15. As regards the signature not appearing on the interview sheet is concerned, the Petitioners have specifically pleaded in the petition that at the time of interview, the selection committee had prepared the attendance sheet in triplicate and obtained the signature of the candidates, but inadvertently the signatures were obtained only on two copies (sets) and no signatures were inadvertently obtained on the third copy. It appears that along with the proposal submitted to Respondent No.2- the Education Officer, the said third copy came to be annexed. This assertion has also not been controverted in the reply affidavit.

16. In these circumstances, none of the grounds taken in the impugned order will lead to rejection of the approval for the appointment of Petitioner No.1. No other grounds are taken in the impugned order or the reply.

17. As a result, the Petitioners are entitled to succeed.

18. Rule is made absolute in terms of prayer clause (b). This order will be complied with within a period of three months from today.

19. Writ petition is disposed of as above.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)