

Writ Petition No. 4650 of 2017

Ms. Manisha Balasaheb Kanase	...	Petitioner.
V/s.		
The State of Maharashtra & Ors.	...	Respondents.

Mr.Narendra V. Bandiwadekar, Sr. Advocate a/w. Mr. Vinayak R. Kumbhar, Rajendra B.Khaire, Aniket Phapale i/b. Sagar Mane for the Petitioner.

Mr. Vikas Mali, Assistant Government Pleader for Respondent Nos.
1 & 2.

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

DATE: 19 June 2024.

ORAL ORDER :

Rule. Rule made returnable forthwith. Learned Assistant Government Pleader waives service for Respondent Nos.1 and 2 – State. None appears for Respondent Nos.3 and 4 in spite of service. Taken up for disposal.

2. The Petitioner who was working with Respondent Nos.3 & 4 – Education Institute has filed this Petition challenging the order dated 21 March 2017 refusing to grant approval to the appointment of the Petitioner as Full Time Teacher in Respondent No.4 - College

and prayed for following reliefs:

“(b) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 21.3.2017 issued by the Respondent No.2 refusing to grant approval to the Petitioner as a full-time Teacher in the Respondent No.4 Junior College, and accordingly the Respondent No.2 may be directed to grant approval to the Petitioner as Shikshan Sevak with effect from 13.6.2008 and release the grant-in-aid for payment of monthly Honorarium for 3 years, followed by payment of salary in pay scale from 13.6.2011 onwards.

(c) By a suitable writ, order or direction, this Hon'ble Court be pleased to direct Respondent No.2 to declare the Petitioner surplus in the Respondent No.4 Junior College as a full-time Teacher, in view of the said full-time post of the Petitioner having lapsed in Academic Year 2016-2017, and thereafter the Respondent No.2 may be directed to absorb the Petitioner in some other aided Junior College in the post of full-time Teacher with all the consequential benefits.”

3. The primary reason i.e. given for a rejection, is there was a backlog of reservation in 2008-2009, and for want of workload in 2016-2017, the full-time post has lapsed. By order dated 3 June 2000, the Petitioner was appointed as a part-time Shikshan Sevak from 12 June 2000 to 11 June 2003 in Respondent No.4 - College for teaching Hindi subjects. The Petitioner's appointment was continued from 2000 to 2004 and every year approval was granted. The Petitioner thereafter was appointed as a part-time teacher, and

the orders issued as a part-time teacher from 3 December 2005 till 4 September 2007 were also approved. Respondent – Management thereafter submitted a proposal for the appointment of the Petitioner on a full-time basis, which was rejected by the impugned order. The impugned order, as stated earlier, primarily proceeds on the basis that there was a backlog of reservation in the years 2008 and 2009 or the open category due to a decrease in the strength of students; therefore, Petitioner could not have been appointed in the open category. Regarding the backlog of 20 posts in the open category, the Petitioner has relied on the Inspection Report of 17 October 2011 which is annexed to the affidavit-in-reply of the State Government dated 9 November 2022. The Inspection report dated 17 October 2011 is stated to be carried out on 24 February 2006.

4. This refers to a backlog of 20 posts in the open category. Based on this position, the Petitioner has relied upon the decisions of this Court in the case of *the President of Sudhagad Education Society, Dist. Raigad & Ors. Vs. The Deputy Director of Education and anr.*¹ and in the case of *Vishnu Pundalik Patil Vs. State of Maharashtra*². In the case of Sudhagad Education Society, the learned Single Judge had taken a view that the approval to the teachers appointed from open category cannot be rejected merely because there is a backlog of reserved category posts when open category posts are available. This view was confirmed by the Division Bench of this Court by order

1 WP No. 4635/2009 dt. 16/7/2009

2 WP No. 1997/2015 dt. 16/3/2022

dated 5 May 2010 in *LPA No.63/2010 (The Deputy Director of Education and another Vs. Hemant Kishan Gavale & others)* and Special Leave to Appeal (Civil) CC 5482-5483/2011 filed by the State Government was dismissed on 26 April 2011. These decisions are thereafter followed by the Division Bench of this Court in the case of *Vishnu Patil*. The legal position is thus being settled, and the factual question arises of whether posts were available for the open category. The learned AGP has sought to point out, as noted in the earlier order, the position of the years 2008 and 2009, which were not relevant because Petitioner was appointed on 16 June 2008. The Inspection Report, which is annexed to the affidavit-in-reply dated 17 October 2011, is certified by the concerned authorities from the Backward Class Cell. This document, placed on record by the State itself, shows the existence of vacancies in the open category.

5. Considering this position, we called upon the State to file an additional affidavit, which has now been filed. However, there is no reference to the Inspection Report of 17 October 2011. This document, certified by the Backward Class Cell, shows the existence of vacancies in the open category and, therefore, has gone unanswered. In the additional reply, the Deputy Director of Education has placed the roster position on record. The Respondent - Management has submitted the roster verified by Backward Class Cell, which was called for by issuing communication on 27 May 2024; copies thereof are annexed. Based on this affidavit, the learned

AGP sought to contend that there were 26 excess appointments in the open category and, therefore, the order rejecting approval on the ground that there were vacancies in the reserved post is correct. The learned counsel for the Petitioner pointed out that the roster, which is annexed to the additional affidavit, is not verified by the Backward Class Cell prepared by the Management. This is relevant as the roster annexed to the earlier affidavit showing the existence of 20 vacancies in the open category is certified by Backward Class Cell, which is not commented upon in the additional affidavit. To consider whether these rosters placed on record by way of additional affidavit and prepared by the Educational Institute are to be taken into consideration, their veracity must be unquestionable. It is surprising that though it is stated to be verified by the Deputy Director of Education in the additional affidavit that there were 25 excess posts, the same Education Department seems to have given approval to the appointments on the said open posts placed on record by the learned AGP.

6. The learned AGP has placed the communication received from the Respondent – Management, which indicates that even employees appointed after the Petitioner's appointment are in the open category, and their posts are approved. Therefore, the position sought to be verified by the Deputy Director of Education in his additional affidavit based solely on the roster prepared by the Management of 26 excess posts in the open category cannot override the roster

placed on record in the earlier affidavit which is certified by Backward Class Cell because it does not stand to reason that such excess posts approval would have been granted in normal course. This brings us back to 20 open category posts as per the Inspection Report as the ground for rejection of the approval.

7. Regarding the second ground that there is a want of workload in the year 2016-2017 if the Petitioner was an approved teacher on that date when the workload was reduced, the Petitioner would be treated as a surplus teacher and placed on the surplus teachers' list. Therefore, the answer to the first ground taken in the impugned order would also be the answer for the second ground.

8. In these circumstances, the Petitioner is entitled to succeed. The Petition is allowed in terms of prayer clauses (b) and (c). Necessary steps be taken by the Respondent – State within eight weeks from the date the order is uploaded.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

L.S. Panjwani, P.S.