

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5383 OF 2022

Harishchandra Narayan Rikame And Anr ...Petitioners

Versus

The State Of Maharashtra and Anr. ...Respondents

Mr. Narendra Bandiwadekar, Senior Advocate a/w Rajendra Khaire,
Aniket Phapale i/b Vinayak Kumbhar for the Petitioners.

Mr. S.B. Kalel, AGP for the Respondent Nos. 1 and 2/State.

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

DATE : 6 MARCH 2024

P.C. :

. Heard learned counsel for the parties.

2. The proposal for appointment of Petitioner No.1 submitted by the Petitioner No.2 Education Institute is rejected by the Deputy Director of Education by order dated 7 September 2021. The approval was sought to the appointment of Petitioner No.1 as '*Shikshan Sevak*' in open category in the aided secondary school. The impugned order gives two reasons for rejecting the proposal. The first is that upon examination of the roster of the Institution, there is a backlog of 5 reserved posts and 3 posts are vacant. 44 posts have been filled in excess and Petitioner No.1 was given appointment

in open category even though there was no post vacant. Second ground is that though the appointment of Petitioner No.1 was of 15 June 2015, the proposal was submitted on 27 September 2018, after delay of 3 years and it was after 23 June 2017 when the State Government has introduced 'Pavitra' portal for the purpose of appointment of the employees.

3. The learned Senior Advocate for the Petitioners states that first ground is factually incorrect based on the roster which was placed before the Deputy Director and it is also contrary to the decisions of this Court which are on record i.e. in the matter of *The President, Sudhagad Education Society and Ors. v/s. The Dy. Director of Education and Anr. in Writ Petition Nos. 4635 of 2009 and 4637 of 2009 dated 16 July 2009* and *The Deputy Director of Education and Anr. v/s. Hemant Kishan Gavale and Ors. In Letters Patent Appeal No. 63 of 2010* with other connected matters, which were confirmed by the Hon'ble Supreme Court by dismissing the Special Leave to Appeal on 26 April 2011.

4. As regard the second ground is concerned, the Petitioners have given an explanation in the petition in paragraph 5 as under :

"5. The Petitioners state that after the appointment was made as aforesaid, the Principal of Junior College prepared the proposal and sought to submit the same to the Respondent No.2 for approval to the appointment of the Petitioner No.1. However, the office of the Respondent No.2 declined to accept the said proposal on the ground that by G.R. dated 2.05.2012 the State Government has imposed

ban on new recruitment in private schools, whereas the present appointment is made in the year 2015, which is during the period of ban and therefore, it is illegal appointment. Thus there is no question of granting approval to the said illegal appointment and hence, the proposal also cannot be accepted. The Principal of Junior College submitted before the Respondent No.2 that the appointment was made in the post which fell vacant due to retirement of the earlier Teacher, who was also English Teacher. As per the order passed by this Hon'ble Court, the ban under the G.R. dated 2.5.2012 is not applicable when the appointment is made for English / Science / Mathematics subject and therefore, the Respondent No.2 was requested to accept the proposal. However, the Respondent No.2 did not accept the said explanation and refused to received the proposal. The Petitioners state that pursuant to the Judgment and order dated 10.7.2017, passed in a bunch of Writ Petitions, the lead petition being Writ Petition No. 8587 of 2016 by the Division Bench (B.R. Gavai and Riyaz I. Chagla JJ) wherein it has held that the ban under G.R. dated 2.5.2012 is not applicable to the appointments following in three categories, one of the category being the appointment made for English / Science / Mathematics subject. The Petitioners state that pursuant to the said Judgment, the Respondent No.1 issued G.R. on 24.8.2018 and directed the Education Officers and Deputy Directors of Education to call for the proposals from the Management, which were previously refused or not accepted on the ground of appointment being made after 2.5.2012."

5. The second aspect is factual one. Also the aspect regarding the roster will have to be examined to ascertain the contention of the Petitioners that there were posts available in the open category. Secondly, the decisions of this Court are not placed before the Deputy Director. In these circumstances, we dispose of the petition

directing that the order dated 7 September 2021, the operative portion thereof, be treated as a notice to the Petitioners to respond. The Petitioners will place its explanation as above before the Deputy Director who will after giving opportunity to the Petitioners will pass a speaking order dealing with the decisions relied upon by the Petitioners, within a period of 8 weeks, subject to earlier time bound directions and other pressing public duties.

6. The Writ Petition is disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)