



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5400 OF 2018

Ku. Sanjivani d/o Uttamrao Khandekar,
Manewada Ring Road, Nagpur

... Petitioner

Versus

S. C. S. Girls' High School,
Through Secretary, Panchpavali, Nagpur
and ors.

... Respondents

Shri Y. R. Kinkhede, Advocate for petitioner.
Shri M. M. Dhandekar, Advocate for respondent Nos.1 and 2.
Shri S. M. Ukey, Additional Government Pleader for respondent
Nos.3 and 4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
NITIN W. SAMBRE, J.**

DATE : 4th April, 2024

P. C.

1. Heard Shri Y. R. Kinkhede, learned counsel for the petitioner, Shri M. M. Dhandekar, learned counsel for respondent Nos.1 and 2/ School Management and Shri S. M. Ukey, learned Additional Government Pleader appearing for respondent Nos.3 and 4/State.

2. The dispute raised in this petition is in relation to the petitioner's appointment on the post of Assistant Teacher at S.C.S. Girls' High School, Panchpavali, Nagpur.

3. The claim of the petitioner is that the terms of the advertisement for selection through which the petitioner was recruited, clearly mention that the selection was to be held for Scheduled Caste candidate. The submission further is that,

however, while according approval to the appointment of the petitioner, the Education Officer did not mention the category to which the petitioner belongs.

4. It is the case set up by the petitioner that un-disputedly the petitioner belongs to Scheduled Caste category and further, that selection was also held against the post reserved for Scheduled Caste category candidates and therefore all the relevant records should depict that the petitioner has been appointed against the Scheduled Caste category post.

5. On the other hand the learned counsel for the School-Management has argued that the post against which the petitioner's appointment was made had fallen vacant on account of dismissal of the earlier incumbent who had filed an appeal against the order of dismissal and accordingly the post was filled in subject to outcome of the appeal filed by the said dismissed Assistant Teacher. He has thus stated that the selection was not made against any clear vacancy where rule of reservation could have been followed and accordingly the petitioner's appointment cannot be treated to have been made against the post reserved for Scheduled Caste candidates.

6. Since the determination of the aforesaid aspect involves disputed questions of fact, it would not be appropriate for this Court to attempt to decide such questions of fact in exercise of jurisdiction under Article 226 of the Constitution of India. In our opinion, it would be more appropriate if such matters are referred for decision to the appropriate Authority under the provisions of The Maharashtra Employees of Private Schools (Conditions of Services) Regulation Rules, 1981 which provide that in case the

dispute relating to inter-se seniority amongst the Assistant Teachers arises, the same has to be referred to the Education Officer. In this case, apart from the claim put forth by the petitioner as discussed above, there appears to be some dispute with regard to inter-se seniority amongst the Assistant Teachers working in the School.

7. Thus having regard to the aforesaid facts, we dispose of the writ petition with a direction to the Education Officer to consider the claim of the petitioner and determine in accordance with law and material which would be placed before him, as to whether the petitioner's appointment on the post of Assistant Teacher was made against the post reserved for Scheduled Caste category. He shall also determine the dispute relating to inter-se seniority amongst the Assistant Teachers working in the School.

8. For the said purpose the petitioner is permitted to make an exhaustive representation taking all the pleas which will be available to her annexing all the documents which she wants to rely upon within a fortnight from today. Once any such representation is made, the same shall be considered and decision thereon shall be taken by the Education Officer strictly in accordance with law. We further direct that before taking final decision in the matter, the School Management as also other Assistant Teachers, who are likely to be affected, shall be given an opportunity of hearing and presenting their respective cases before the Education Officer.

9. The decision under this order shall be taken by the Education Officer expeditiously, say, preferably within a period of one month from the date of representation is made by the petitioner.

10. With the aforesaid directions and observations, the writ petition is disposed of. No order as to costs.

(NITIN W. SAMBRE, J.)

(CHIEF JUSTICE)

Asmita