



Judgment

wp5402.23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION Nos. 5402, 5858 & 5884 OF 2023.

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WRIT PETITION No. 5402 OF 2023.

1.Laxman s/o Purushottam Thakare,
Aged about 55 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Sheli, Panchayat Samiti,
Ralegaon, District Yavatmal.

2.Prakash Kisanrao Bawane,
Aged about 53 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Aamset, Panchayat Samiti,
Darwaha, District Yavatmal.

3.Vilas s/o Gobra Rathod,
Aged about 54 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Pandhurna, Panchayat Samiti,
Darwaha, District Yavatmal.

4.Ganesh Champatrao Bhoyar,
Aged about 53 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Chuopan, Panchayat Samiti,
Maregaon, District Yavatmal.

Rgd.

5.Mokshavir Laxmanrao Wankhade,
Aged about 57 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Shibla, Panchayat Samiti,
Zari, District Yavatmal.

6.Gangadhar Tanbaji Chavardol,
Aged about 56 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Kelapur, Panchayat Samiti,
Pandharkawada, District Yavatmal.

7.Surendra Devidas Lingarwar,
Aged about 56 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Pimpri Road, Panchayat Samiti,
Pandharkawada, District Yavatmal.

8.Rajanna Istaari Bhandarwar,
Aged about 57 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Akoli (B), Panchayat Samiti,
Pandharkawada, District Yavatmal. ...

PETITIONERS.

VERSUS

1.State of Maharashtra,
through its Secretary, Department
of Urban Development,
Mantralaya, Mumbai – 32.

2.State of Maharashtra,
through its Secretary, General
Administration Department,
Mantralaya, Mumbai – 32.

3.Zilla Parishad, Yavatmal
through Chief Executive Officer,
Yavatmal.

4.Education Officer [Primary]
Zilla Parishad, Yavatmal.

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RESPONDENTS.

WITH

WRIT PETITION No. 5858 OF 2023.

1.Sudhakar s/o Yuvraj Gawande,
Aged about 57 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Marki (Bu), Panchayat Samiti,
Zari Jamani, District Yavatmal.

2.Vijay s/o Ramchandra Patil,
Aged about 57 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad Upper
Primary School, Mendoli, Panchayat Samiti,
Wani, District Yavatmal.

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PETITIONERS.

VERSUS

1.State of Maharashtra,
through its Secretary, Department
of Urban Development,
Mantralaya, Mumbai – 32.

2.State of Maharashtra,
through its Secretary, General
Administration Department,
Mantralaya, Mumbai – 32.

3.Zilla Parishad, Yavatmal
through Chief Executive Officer,
Yavatmal.

4.Education Officer [Primary]
Zilla Parishad, Yavatmal.

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RESPONDENTS.

WITH

WRIT PETITION No. 5884 OF 2023.

1.Pundlik s/o Shankarrao Rekalwar,
Aged about 55 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Borsingh, Panchayat Samiti,
Yavatmal, District Yavatmal.

2.Vitthaldas s/o wamanrao Aru,
Aged about 54 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Brahmi, Panchayat Samiti,
Darwha, District Yavatmal.

3.Sanjay s/o Gulabrao Bihade,
Aged about 53 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Mangkinhi, Panchayat Samiti,
Darwha, District Yavatmal.

4.Narayan Kachruji Barahate,
Aged about 56 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Borgaon, Panchayat Samiti,
Pandharkawada, District Yavatmal.

5.Lata Bhimrao Girolkar,
Aged about 57 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Wadgaon, Panchayat Samiti,
Yavatmal, District Yavatmal.

6.Vijay Ramdas Gulhane,
Aged about 54 years, Occupation -
Assistant Teacher, r/o. Zilla Parishad
Primary School, Asegaon, Panchayat Samiti,
Babhulgaon, District Yavatmal. ...

PETITIONERS.

VERSUS

1.State of Maharashtra,
through its Secretary, Department
of Urban Development,
Mantralaya, Mumbai – 32.

2.State of Maharashtra,
through its Secretary, General
Administration Department,
Mantralaya, Mumbai – 32.

3.Zilla Parishad, Yavatmal
through Chief Executive Officer,
Yavatmal.

4.Education Officer [Primary]
Zilla Parishad, Yavatmal. ...

RESPONDENTS.

Mr. S.S. Dhengale, Advocate for Petitioners.
Mr. N.R. Patil, A.G.P. for Respondent Nos.1 and 2.
Mr. Vikas Kulsange, Advocate for Respondent Nos.3 and 4.

**CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.**

DATE : JUNE 19, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Rule. Rule is made returnable forthwith and by consent of the learned Counsel for the parties and matters are taken up for final disposal.

2. Petitioners are working as Assistant Teachers in various schools run by the respondent Zilla Parishad, Yavatmal. By these petitions they have impugned a decision dated 06.07.2023 taken by respondent nos. 3 and 4 Zilla Parishad, Yavatmal rejecting their representation in the matter of considering them for promotional post of Headmaster. The main ground of challenge in these

Rgd.

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petitions is that the Zilla Parishad has not followed the mandate of maintaining two promotional lists i.e. Selection List and Wait list in terms of government resolution dated 01.08.2019. Secondly, since names of petitioners were not included in the select list, they cannot be denied the promotional avenues in terms of government resolution dated 12.09.2016.

3. The learned Counsel appearing for petitioners pointed out that by virtue of an interim order one of the petitioner has also joined the promotional post of Headmaster and had superannuated therefrom. The short point arise for consideration is – Whether petitioners can be debarred for two years from the zone of consideration to the promotional post on account of the government resolution dated 12.09.2016.

4. Undisputedly the said government resolution conveys that the candidates who have been promoted or were about to be promoted, if refuse to join on the promotional post, they should be debarred from the zone of consideration for promotion for next two

years. It is the consistent stand of respondents that petitioners have been considered for promotion, they were called for counseling for the purpose of giving posting to the promotional post, but, they have refused the same, thus, their case is covered within the ambit of the government resolution dated 12.09.2016.

5. Respondents have filed reply affidavit along with list of candidates who were considered for promotion in the year 2021. It is demonstrated that said list dated 01.12.2021 contain names of total 378 candidates who were in the zone of consideration for the promotional post. Petitioners were included in the said list at Sr.Nos. 300, 316, 356, 292, 305, 326, 325, 339, 298, 261, 290, 358, 361, 317 and 304, for which there is no dispute. It is the contention of petitioners that it was merely a list of teachers who were in the zone of consideration, but, not the list of selected candidates. According to them, unless the candidate's name is found in the select list, the government resolution of the year 2016 would not apply.

6. In the light of above submission, we have re-visited the

government resolution of the year 2016, which does not spell out that a person is necessarily to be listed in the select list. Clause 1 conveys that the candidate who is selected, as well as who has refused the promotion even before selection, is also debarred. Petitioners were very much in the zone of consideration, as their name appears in the list of candidates who had allegedly refused the promotion. Our attention has been invited to page no.11 of the writ petition wherein it has been pleaded that on 30.03.2022, petitioners were called for counseling and asked to join at remote places. It is thus obvious that petitioners were selected and directed to join the promotional post, but, it was not acceptable to them, meaning thereby petitioners have refused the promotion. Thus, as petitioners, have refused the promotional post, their names do not figure in the final select list of candidates.

7. As regards to the contention that respondents have not maintained two lists in terms of Clause 6.2 of government resolution of the year 2019, namely one list of selected candidates and another of wait list candidates, however, such irregularity, if any, would not change the situation. Petitioners have refused promotional post and

thus the impugned communication cannot be faulted with which is in consonance with the government resolution dated 12.09.2016.

8. The learned Counsel for petitioners has pointed out that two persons namely Shri Vaidya and Shri Deulkar, though refused promotion in the year 2021, however, their names have been included in the promotional list for the year 2023. Petitioners seek similar treatment in said manner. Learned A.G.P. submits that those persons have not refused promotion in the year 2021. Even if that is the situation, it is for the respondents to take a call. However, one cannot claim parity about irregularity.

9. In view of above discussion, there is no merit in the petitions, they are therefore, dismissed. No costs. The Chief Executive Officer is free to take appropriate decision by considering the length of service of petitioners, if rule so permits. Rule discharged.

JUDGE

JUDGE