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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5088 OF 2021

Smt. Vaishali Balkrushna Pawar,
Age: 42 years, Occu: Service,
R/o. Shivaji Road, Line No.3,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar
3. Khasdar Govindrao Adik
Gramin Shikshan Sanstha,
Ashok Nagar, Tq. Shrirampur,
Dist. Ahmednagar
Through its Secretary

....RESPONDENTS

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Mr C. K. Shinde, Advocate for petitioners
Mr A. V. Lavte, A.G.P. for respondent Nos.1 & 2
Mr S. D. Kotkar, Advocate for respondent No.3

CORAM : MANGESH S. PATIL

AND

PRAFULLA S. KHUBALKAR, JJ.

DATE : 10th February, 2025

JUDGMENT (PER : PRAFULLA S. KHUBALKAR, J.)

1. Heard. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. By invoking Article 226 of the Constitution of India, the petitioner has challenged the order dated 11/10/2017, passed by respondent No.2/Education Officer (Secondary), Zilla Parishad, Ahmednagar, refusing approval to her appointment on the post of 'Shikshan Sevak'.

3. The Education Officer has rejected the approval by observing that the appointment of the petitioner was not made in accordance with the guidelines as prescribed by the Government Resolution dated 06/02/2012 and that since other surplus teachers were not absorbed, the petitioner's appointment was not legal. It was also observed in the impugned order that there was no compliance with Circulars dated 16/01/2017 and 31/03/2017 which imposed restriction on grant of approval till the process of absorption of surplus teachers as per the staffing pattern 2016-17 was complete. Additionally, it was observed that since there was ban on recruitment of employees as per the Circular dated 08/08/2017, no order of approval could be issued. The petitioner has raised challenge to this order on several grounds.

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4. Mr C.K.Shinde, learned advocate for the petitioner vehemently argues that the impugned decision is grossly arbitrary and illegal. He submits that the petitioner's appointment as 'Shikshan Sevak' from 01/08/2017 was made by following proper procedure and it was against a clear and sanctioned post. He submits that there were no surplus teachers available in any school at the time of petitioner's appointment and in view of the petitioner's eligibility and qualification, she was duly appointed even by complying with the reservation criteria. He also submits that the ban on recruitment which was imposed by the Government Resolution dated 02/05/2012 was subsequently relaxed by the Government Resolution dated 04/09/2013 and as such, the reasons put forth for refusal of approval to the appointment of the petitioner are absolutely baseless.

5. Mr Amar Lavte, learned A.G.P. opposes the petition by relying on the affidavit-in-reply dated 20/12/2021. He justifies the impugned order by pointing out that precise reasons are mentioned in the impugned order and in view of non-compliance with the circulars mentioned therein, the approval was rightly rejected.

6. Mr S. D. Kotkar, learned advocate for respondent No.3/Management makes submissions supporting the case of the

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petitioner. By referring to its affidavit-in-reply dated 25/11/2022, he submits that the appointment of the petitioner was made by following due procedure. He submits that the Management ensured that no surplus teacher was available for absorption at the time of petitioner's appointment and in view of the backlog of Other Backward Class category and the need for appointment of a teacher for Science and Mathematics subjects, the petitioner was duly appointed. By placing reliance on the judgment in the matter of **Munoli Rajashri Karabasappa Vs. State of Maharashtra and others, 2017 SCC OnLine Bom 10130**, it is submitted that ban on recruitment would not apply since the appointment was made for subjects of Science and Maths.

7. We have considered the rival contentions and perused the papers.

8. Perusal of the impugned order shows that the reasons for rejection of approval to the appointment of the petitioner are general and vague. Although it is stated that proper procedure was not followed and that other surplus teachers were not absorbed, nothing was specifically stated as to which kind of procedure was breached while making appointment and how many surplus teachers were

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awaiting appointments at the time of petitioner's appointment. Although it is stated that the process of absorbing the surplus teachers was not complete, the impugned order does not demonstrate that the Management was informed about availability of any surplus teacher. As regards ban on recruitment process, reliance is placed on Circular dated 08/08/2017, however, it has to be noted that the petitioner's appointment was made on 01/08/2017 itself and the circular could not have been applied to her.

9. It is pertinent to note, the appointment of the petitioner was made by following the due procedure and in view of the eligibility, the petitioner was appointed. The affidavit-in-reply submitted by respondent No.3 reveals that, at the relevant time, in response to the request of the Management dated 20/06/2017 for permission to advertise the posts which fell vacant on retirement of Shri. Ashok Ramchandra Jore, there was no response at all from the Education Officer and the Management was compelled to go ahead with the recruitment process. In view of the petitioner's eligibility, the Management decided to appoint her in view of the exigency of the situation. It is pertinent to note that there is no material on record to show that any surplus teacher was sent to the Management and the

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petitioner was appointed by ignoring the claim of a surplus teacher. Even as regards the ban on recruitment, it is clear that at the relevant time, no ban was operating, neither the Management was informed in that regard by the Education Officer. As such, no fault can be found with the appointment of the petitioner, to term it as illegal.

10. In the light of the above mentioned circumstances, we are of the considered view that the impugned order is unsustainable. The division bench judgment in the matter of **Munoli Rajashri Karabasappa** (supra) clarifies the position of law that ban on recruitment was not applicable to the appointments for the subjects of Science and Maths and where the recruitment was made to fulfill the backlog of reserved category candidates. For all these reasons, no fault can be found with the appointment of the petitioner. There is no material to demonstrate any kind of illegality or malpractice in the process of appointment of the petitioner.

11. We are, therefore, of the considered view that the impugned order rejecting the approval to the petitioner's appointment as a 'Shikshan Sevak' is unsustainable and is liable to be quashed and set aside. Hence, we pass the following order :-

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- (a) The writ petition is allowed.
- (b) The impugned order dated 11/10/2017 is quashed and set aside.
- (c) Respondent No.2/Education Officer (Secondary), Zilla Parishad, Ahmednagar is directed to immediately grant approval to the appointment of the petitioner as a 'Shikshan Sevak' and to confer upon the petitioner the consequential benefits.

12. Rule is made absolute in above terms.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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