



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4591 OF 2024
IN
WRIT PETITION NO.14718 OF 2023

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-400 032.
2. The Commissioner of Education,
Maharashtra State, Pune.

.. Applicants

Versus

1. Santosh s/o Vasant Chavan
Age: 34 years, Occu.: Nil,
R/o. Umbarkheda, Tal. Kannad,
Dist. Aurangabad.
2. Ramdhan s/o Yogiraj Bade,
Age: 32 years, Occu.: Nil,
R/o. Gaondara, Tal. Dharur,
Dist. Beed.
3. Maharashtra State Council of
Examination, Through its Deputy
Commissioner and Member – Secretary,
17, Dr. Ambedkar Marg,
Near Lal Temple, Pune – 01.

.. Respondents

...
Mr. A. B. Girase, Government Pleader for the applicants.
Mr. S. S. Thombre, Advocate for respondent Nos.1 and 2.
Mr. A. R. Nikam, Advocate for respondent No.3.
...

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 13 JANUARY 2025
PRONOUNCED ON : 27 FEBRUARY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed by the State for following relief :-

“B) This Hon’ble Court may kindly be pleased to modify the order dated 05.12.2023 passed by this Hon’ble Court in Writ Petition No.14718/2023 thereby permitting the Applicants to publish the select list of 332 suitable and eligible candidates found as per the merit in the recruitment process undertaken pursuant to the Advertisement dated 09.08.2019 and further permit Applicants to issue them necessary appointment orders and for that purpose issue necessary order.”

2. Heard learned Government Pleader Mr. A. B. Girase for the applicants/State, learned Advocate Mr. S. S. Thombre for respondent Nos.1 and 2 and learned Advocate Mr. A. R. Nikam for respondent No.3.

3. Learned Government Pleader appearing for the applicants has taken us through the order dated 05.12.2023 and 06.02.2023 in Writ Petition Nos.14718 of 2023 and 11081 of 2019 with companion matters. In those writ petitions, the petitioners have prayed for writ of mandamus or other such appropriate writ to direct the respondent/State to provide 5%

horizontal reservation to the candidates belonging to Project Affected Persons Category in the respective advertisements published by the authorities of the State of Maharashtra on Pavitra Portal for filling up the vacant posts of teachers. By order dated 05.12.2023, liberty was granted to seek modification of the order and, therefore, the present application has been filed. Learned Government Pleader further submits that in Writ Petition No.11081 of 2019 together with other petitions, the petitioners sought directions for the State to correct the select list published on 09.08.2019 with further directions to include eligible candidates in the select list who are entitled to get the seat under horizontal reservation pursuant to advertisement dated 09.08.2019. There was no disclosure on this fact in the advertisement and therefore the writ petitions have been filed. In fact, the recruitment process commences with the advertisement dated 09.08.2019 and it is still ongoing. As the fact was not pointed out to this Court, this Court had passed the interim order not to formalize the selections and not to issue appointment orders without obtaining leave of the Court. In fact, the 5% reservation has been given and that can be demonstrated. There is huge vacancy for the post of teachers throughout the State and

the reason mainly was due to absence of teachers for recruitment, not eligible for the posts of teachers at the verification of documents and some candidates failed to join. Now, the State had given communication dated 19.04.2023 to applicant No.2 i.e. the Commissioner of Education to fill the said vacancies of the teachers. In fact, such category already exists in Pavitra Portal. The posts of horizontal reservation like Project Affected Persons, Earthquake affected person, sports persons and women are recommended by giving chance to these category candidates from the vacant posts as per the order dated 06.02.2023. Now, there is no new advertisement, but the candidates would be adjusted in view of the fresh guidelines and in the selection process then total 332 candidates were found eligible and suitable for selection as per merit. Therefore, the order dated 05.12.2023 needs to be modified accordingly.

4. Learned Advocate for respondent Nos.1 and 2 strongly opposed the application and submitted that due to the lack of transparency again mess will be created affecting the rights of the candidates. Certainly, everything will be considered at the time of final hearing of the matter and the order passed on 05.12.2023 is explanatory. It was then stated that whether government can

utilize the select list of 2019 in terms of advertisement dated 09.08.2019 for filling up the vacant posts under the advertisement in November – December, 2023 as the normal life of a select list is for a one year, is a question. Therefore, there is no necessity to modify any order.

5. The first and the foremost fact to be noted is that in the main petition also, as aforesaid, the writ has been sought for providing 5% horizontal reservation to the candidates belonging to the Project Affected Persons Category. So the entire process was not asked to be called off. When it was a question of only 5% horizontal reservation, then when this application was on board on 19.12.2024, after hearing learned Government Pleader and upon the query, learned Government Pleader submits that he would place on record as to how 5% horizontal reservation has been kept to the candidates belonging to project affected persons category. We had asked the chart to be produced on or before 09.01.2025. Accordingly, the said chart has been produced. We are not going to consider that chart in analytical way, but certainly in the category of Project Affected Persons, Earthquake Affected Persons and the other categories, different numbers have been stated and the chart is management wise, that means Zilla

Parishad wise. Therefore, *prima facie* some data is available before us to consider that such reservation has been kept. Now, the fact is that the entire process appears to be still ongoing since 2019. Of course, in between there was Covid-19 pandemic situation which would have affected the entire process and taking into consideration the huge vacancy i.e. 332 candidates throughout the State and the major issue of employment as well as when the vacancies are in respect of teachers, affecting the normal working of schools where the education is imparted throughout the State, we are of the opinion that the order dated 05.12.2023 needs to be modified. We state at the cost of repetition that in view of the fact that it is demonstrated that there is *prima facie* exercise of keeping 5% horizontal reservation, this modification is permitted, however, certainly it would be subject to the outcome of the writ petition/writ petitions. When we are permitting the said modification, we direct the applicants/original respondents that while issuing such appointment orders, it should be specifically mentioned that it is subject to the outcome of the writ petition/writ petitions and such statement should be at the heading with appropriate font size and in bold letters. With these observations, we pass the following order :-

ORDER

- I) The Civil Application stands allowed.
- II) The order dated 05.12.2023 passed by this Court in Writ Petition No.14718 of 2023 is hereby modified as follows :-

“A) Applicants/State and the Commissioner of Education, Maharashtra State, Pune are hereby allowed to publish the select list of 332 suitable and eligible candidates found as per the merit in the recruitment process undertaken pursuant to the advertisement dated 09.08.2019 and as per the communication by applicant No.1 dated 19.04.2023 and further, they are permitted to issue necessary appointment orders to the eligible candidates. While issuing such appointment orders, it should be specifically mentioned that it is subject to the outcome of the writ petition/writ petitions and such statement should be at the heading with appropriate font size and in bold letters.”

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm