



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 WRIT PETITION NO. 11364 OF 2022

Swapnil Sambhaji Gaikwad

....Petitioner

VERSUS

The State of Maharashtra
Through Its Principal Secretary
And Others

.....Respondents

.....

Mr. V. S. Panpatte, Advocate for the Petitioner
Mr. A. R. Kale, Addl. GP for the Respondent Nos.1 to 3
Mr. M. P. Tripathi, Advocate for Respondent No.6

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**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

DATE : 04.08.2025

PER COURT :

1. Heard the learned Advocate for the Petitioner, the learned Addl. G. P. for Respondent Nos.1 to 3 and the learned Advocate for Respondent No.6. None for Respondent Nos.4 and 5.

2. Impugned in this Petition under Article 226 of the Constitution of India is the order dated 28/01/2022, passed by Respondent No.2 - Deputy Director, cancelling the approvals granted by Respondent No.3 - Education Officer to the appointment of the Petitioner. The Petitioner was appointed on 21/12/2013 as Assistant Teacher on the unaided post on the open seat. The Management submitted a proposal for approval of his appointment to the Respondent No.3 - Education Officer on 24/03/2014. The Respondent No.3 - Education Officer gave the approval. Subsequently, in 2016, the Petitioner was granted the approval as

the permanent teacher. The Respondent No.6 filed a Complaint with the Respondent No.3 - Education Officer that, the appointment of the Petitioner was illegal. The Respondent No.2 - Deputy Director conducted an inquiry on the Complaint of Respondent No.6. The Petitioner was heard during the course of the said inquiry. By the impugned order, the Respondent No.2 - Deputy Director cancelled the initial approval and also the permanent approval of the Petitioner on the following grounds :

- (I) The appointment was not made from the camp of Respondent No.3 - Education Officer.
- (II) Despite there being a backlog of reserved post, the appointment was made on the open seat.
- (III) There was no permission from the Respondent No.3 - Education Officer for the said appointment.
- (IV) The name and date of the news paper, in which an Advertisement was given, was missing.

3. The learned Advocate for the Petitioner submits that, the Respondent No.6 was a stranger and as per the Government Resolutions dated 03/12/1958 and 26/12/2019, Complaints made by the strangers were not maintainable. He further submits that, the grounds, on which the approval was cancelled, are not sustainable, for the reason that, the appointment was made when the camp was taken by the Respondent No.3, the roaster was approved and there was no backlog of reserved posts, the appointment of the Petitioner was on the open seat, and the Management had sent a communication to the Respondent No.3 - Education Officer seeking permission to publish an Advertisement before filling up the post. He further submits that, the name and date of the newspaper, in which the Advertisement was published,

was very much on the said newspaper. He submits that, in identical matter, this Court had set aside such order with heavy cost on the Complainant. Hence, this Petition be allowed.

4. The Petition is vehemently opposed by the learned Advocate for Respondent No.6. He submits that, he was not the stranger and was part of the Management, which runs the School, where the Petitioner was working. He further submits that, despite there was backlog of reserved post, the Petitioner came to be appointed. He further submits that, the grounds, on which, the Petitioner's approval has been cancelled, are appropriate and therefore, after hearing the Petitioner, the same is passed and no interfere is called for. In support of his contention, he relied on the order of this Court in Writ Petition No.10741/2014 decided on 06/02/2019, wherein, though the post of reserved category was vacant, the appointment of the open candidate was made on the reserved post and the order of cancelling the approval was not interfered with. He submits that, this Petition be dismissed.

5. It is submitted by the learned Addl. G. P. that, the impugned order is self-speaking and is based on sound grounds and passed after hearing all the sides. He submits that, no interference is called for in the impugned order.

6. We have perused the papers on record. As far as the objection that the Respondent No.6 was the stranger, the same melts down in view of the specific contention of the Petitioner in Paragraph No.5 of the Petition that, Respondent No.6 was the Member of the Managing Committee of Respondent No.4 - Management as per Schedule-I of the Trust. Thus, the ground of non maintainability of Complaint does not survive.

7. As far as Ground No.(I) that, the appointment was not made from the camp of Respondent No.3 - Education Officer, the copy of outward register from the office of Respondent No.3 - Education Officer shows the name of Petitioner and the date as 29/03/2014. There is no dispute in respect of the copy of the said outward register. This material thus clearly indicates that, this ground has no legs to stand.

8. As regards the Ground No.(II) that, the appointment was made on the open seat, the copy of approved roaster dated 28/05/2013 shows that, there was no backlog of reserved post. Undisputedly, the appointment of the Petitioner was on the open seat and the Petitioner belong to the open category. Therefore, the said Judgment relied upon by the learned Advocate for Respondent No.6 will not be applicable to the case at hand and this ground also falls down.

9. As regards the Ground No.(III) that, there was no permission from the Respondent No.3 - Education Officer before filling up the post, the copy of communication dated 16/10/2013, having stamp of the Office of Respondent No.3 - Education Officer shows that, the Head Master had sought permission to issue an advertisement to fill-up one vacant post of the Assistant Teacher. There is no dispute in respect of this communication. Therefore, the said ground also falls down.

10. As regards the Ground No.(IV) that, there was no name and date on the news paper, a typed copy of the said advertisement is on record at Exhibit - A [Page No.21]. The learned Advocate for the Petitioner tenders across the bar copy of the said advertisement. The same is taken on record. It shows the name,

date of news paper and advertisement. Therefore, it is clear that, before appointment of the Petitioner, the post was advertised in the news paper.

11. There is no dispute that, after the appointment of the Petitioner, the proposal was sent for approval to the Respondent No.3 - Education Officer and Respondent No.3 - Education Officer had granted the approval, initially as the Assistant Teacher and thereafter, as the Permanent Teacher. This shows that, the Respondent No.3 - Education Officer must have granted the approval by following due procedure. In this view of the matter, the impugned order is liable to be quashed and set aside. Hence, the following order:

ORDER

- (a) The impugned order dated 28/01/2022, passed by Respondent No.2, is quashed and set aside.
- (b) The Writ Petition stands disposed off accordingly.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer/August-2025