



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

WRIT PETITION NO.3749 OF 2022

Achala Martand Hattimare,
Aged 32, Occ : Assistant Teacher,
R/o. Dhiwarkheda, Post : Palandur,
Tq. Lakhni, District-Bhandara.

.. Petitioner

..Versus..

1. State of Maharashtra,
Department of Sports and
School Education, Madam
Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400 032.
2. Divisional Deputy Director of Education,
Nagpur Division, Nagpur.
3. Education Officer (Secondary),
Zilla Parishad, Bhandara.
4. Smt. Anandabai Education Society,
Isapur/Guradha, Tq. Lakhni,
District-Bhandara, through
President.
5. Shriram Fate Vidyalaya, Pohara,
Tq. Lakhni, District-Bhandara,
Through Headmastr.

.. Respondents

.....
Smt. R.D. Raskar, Advocate for Petitioner.
Shri S.B. Bissa, AGP for Respondent Nos.1 to 3/State.
Shri A.R. Ingole, Advocate for Respondent Nos.4 and 5.
Shri N.D. Khamborkar, Advocate for Applicant/Intervenor.

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CORAM : SMT. M.S. JAWALKAR, AND
PRAVIN S. PATIL, JJ.
RESERVED ON : 13th AUGUST, 2025.
PRONOUNCED ON : 04th SEPTEMBER, 2025.

JUDGMENT [Per : Pravin S. Patil, J.]

1. Rule. Rule made returnable forthwith. By consent of learned Counsel for the parties, the matter is taken up for final disposal.

2. The grievance raised by the Petitioner in the present matter is that though her appointment was made by the Management by following due procedure of law, the learned Education Officer, by impugned communication dated 09.03.2021 and 09.02.2022, refused to grant approval to the services of Petitioner against the post of Assistant Teacher in Respondent no.5 school. Hence, with this grievance, the present petition came to be filed before this Court by the Petitioner.

3. The facts involved in the matter can be summarized as under :

Respondent No.4 is Educational Society and runs Respondent No.5-School. It is the case of the Petitioner that Society runs in all five schools. In the Academic Session-2009-2010, two posts falls vacant on the count of promotion of the existing teacher as

a Headmaster in the respective schools, out of total 59 sanctioned posts.

It is the submission of the Petitioner that as per the roster of the schools, which she has produced on record, there is a backlog of 6 posts of Other Backward Class category. Therefore, the Management, without obtaining prior permission of Education Officer, issued the advertisement in a widely circulated newspaper in Bhandara District and, thereafter, she has been selected by Management from amongst available candidates and issued the appointment order for a probation period of three years as Shikshan Sevak. Accordingly, Petitioner joined Respondent No.5-School on 15.11.2011. After joining of the school, it is claimed that the proposal for approval was forwarded to the Respondent No.3-Education Officer on 15.11.2011 by Respondent No.5 school.

4. It is stated by the Petitioner that in the meantime, Respondent Nos.4 and 5 approached to the State Government for seeking directions to grant approval to the appointment of the Petitioner in absence of 'No Objection' obtained from the Education Officer. Petitioner relied upon the communication issued under the signature of one Shri S.D. Mane, Under Secretary, Maharashtra State, addressed to the Education Officer, stating that by excluding the condition of not obtaining the prior permission, the approval should

be granted to the appointment of Petitioner along with one Ku. Meenakshi Vijay Sahare.

5. It is stated that the said communication of the State Government was also forwarded to the Deputy Director of Education, Nagpur Division, Nagpur. Accordingly, the Deputy Director of Education, Nagpur made communication with the Education Officer on 17.12.2018. In view of these two communications, Respondent No.5 on 16.12.2020 made request to the Education Officer that though proposal for the approval of Petitioner is pending with the office of Education Officer since 15.11.2011, no decision has been taken and, therefore, same should be considered positively in the matter.

In view of above said communications, Respondent No.3- Education Officer first time looked into the pending proposal and on verification of same, vide communication dated 22.01.2021, pointed out certain shortfalls in the proposal forwarded by the Respondent No.5. It is clarified that unless the said deficiencies in the proposal stated by Respondent No.3 in communication dated 22.01.2021, no approval can be granted in the matter.

6. According to the Petitioner, Respondent No.5, by his communication dated 06.02.2021, satisfied all the deficiencies

pointed out by the Respondent No.3-Education Officer. However, by the order dated 09.03.2021, the Education Officer rejected the proposal on the ground that the advertisement was not issued in a widely circulated newspaper, there is no pay-scale nor workload is mentioned in the advertisement, there is a backlog of Scheduled Castes, Scheduled Tribe, Nomadic Tribe and therefore the advertisement issued is not proper and lastly on the count of delay in forwarding the proposal for approval.

7. It is stated by the Petitioner that Respondent Nos.4 and 5 made an attempt before Education Officer to re-consider the order of rejection of approval. But by the order dated 09.02.2022, after re-visiting all the issues, the Respondent No.3-Education Officer confirmed his order dated 09.03.2021.

Hence, Petitioner, in the background of above said factual position, approached before this Hon'ble Court to challenge the order of Education Officer.

8. In the present petition, the Respondent No.3 filed their affidavit and stated that as the reasons stated in the impugned order are justified, there is no need to invoke the extra-ordinary jurisdiction to re-consider the matter. It is pointed out that in absence of permission from the Education Officer, which is the mandate as per

Section 5 of the M.E.P.S. Act, the entire action taken by the Respondent Nos.4 and 5 to appoint the Petitioner and forward the proposal for approval is immaterial and therefore decision taken in the matter is right and correct.

9. It is pointed out that present petition was tagged with Writ Petition No.3748/2022 as issue involved in both the petition is identical. From the docket of Writ Petition No.3748/2022, the learned Assistant Government Pleader appearing for Respondent No.3 drew our attention to the order passed by this Court dated 11.03.2024. The same is reproduced as under :

“The learned counsel for the petitioner is granted time of three weeks to file additional affidavit, as prayed, on the issue of proposal being forwarded to the Education Officer well within time for grant of approval.

2. *During the course of hearing, it was noticed that the State Government has issued a communication to the respondent-Education Officer not to insist upon the options of no objection from the Education Department in the matter of appointment of the petitioner as Shikshan Sevak.*

3. *We failed to understand from the contents of the said communication as to what was the occasion for the Additional Secretary, School Education, to issue such communication bearing No. संकिर्ण-2018/सं.क.507/टीएनटी-1 dated 17.12.2018. As such, we would like to have response of the Secretary, of the School Education Department.*

4. *Learned Additional Government Pleader shall communicate this order to the Secretary, School Education Department.*

5. *Stand over to 2.4.2024”*

10. In furtherance of directions of this Court, the Principal Secretary, School Education Department, Mantralaya, Mumbai on 07.05.2024 filed affidavit on record and specifically stated in para (3) as under :

“3. Pursuant to the order passed by this Hon’ble High Court, it is submitted that, the No Objection Certificate is one of the essential documents for granting approval for the appointment of Shikshan Sevak, which should be given by concern Education Officer. My office has gone through the records available with the concern desk, the letter 17.12.2018 is not listed in the reference register nor is its copy available. Hence, it is clear that, this letter is not issued by this department. Also, I further clarify that, the other letters of the same subject bearing outward number of this section, are cancelled by Government Letter dated 12.02.2021. Hereto Annexed and Marked as Exh-R-1 is the copy of letter dated 12.02.2021. Hence, the prayer of the petitioner to sanction approval to the post of Shikshan Sevak on the basis of letter dated 17.12.2018 is illegal. Hence, the request of the petitioner to grant approval to the appointment as Shikshan Sevak cannot be granted/sanctioned.

I say and submit that, in such cases the responsibility of salary to the petitioner and other consequential benefits lies on the respondent management only.”

11. As such, learned Assistant Government Pleader states that by manipulating the document dated 17.12.2018, Petitioner and Respondent Nos.4 and 5 asked Education Officer to decide the proposal in absence of prior permission letter of his office. But same is now clarified by the Authority by filing affidavit on record. Therefore, there is one additional reason to reject the proposal of petitioner.

12. In the light of submissions of both the parties, we have perused the entire record and also the provisions of law which are pointed out by the parties in the matter.

13. It is admitted fact that Respondent No.4 runs Respondent No.5 private school. The services of the Petitioner are governed by the provisions of the M.E.P.S Act, 1977 and Rules, 1981. The Section 5 of this Act is crucial to decide the controversy in the matter. According to this provision, it is the obligation on the Management to fill up the vacant post in the manner prescribed. The manner prescribed is under Rule 9 of the M.E.P.S. Rules, 1981. It will be profitable to reproduce Section 5 of the M.E.P.S. Act, 1977 and Rule 9 of the M.E.P.S Rules, 1981.

Section 5: Certain obligations of Management of private schools :

(1) The Management shall, as soon as possible fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy ;

Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education], whether there is any suitable person available on the event of such person being available, the Management shall appoint that person in such vacancy.]

(2) Every person appointed to fill a permanent vacancy except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to

have been confirmed.

Provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years]

(2A) Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice or salary or honorarium of one month in lieu of notice.

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.

Rule 9 : Appointment of staff :

(1) The teaching staff of the school shall be adequate having regard to the number of classes in the school and the curriculum including alternative courses provided and the optional subjects taught therein.

(2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee:

Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.

(2-A) The management of the private school and advertise the vacancies for the post of teacher in details of subjects, with Bindunamavali on the online software programme developed by the Government or an agency authorized by the Government in at least one local newspaper having wide circulation in the region, and also notify the vacancies to the Employment Exchange Centre of the District and District Social Welfare Officer.]

(2-B) The management shall be kept open for at least fifteen days before filling of the concerned post. The candidate may apply for vacant post in response to the said advertisement through online process or by making an application in writing giving details regarding name, address, date of birth, educational and professional qualifications, experience with the marks secured in the Aptitude Test.

(2C) After completion of the period mentioned in the advertisement, the Education Officer or Deputy Director, as the case may be, shall communicate the names of the candidates, who have passed the Aptitude Test, to the Management through online process in proportion 1:10 for one vacant post. The selection of the candidate shall be made by the school committee on the basis of interview. If the school committee does not select candidate having higher marks in the Aptitude Test, the Management shall record the reasons for the same :

Provided that, the Management may also select the candidates who have passed the Aptitude Test directly from the online merit list maintained by the Education Director, without taking interview.

(2D) The Management shall publish the names of the selected candidates within five working days on Pavitra web portal and shall also communicate the names of the selected candidates to the concerned Education Officer or Deputy Director, as the case may be.]

*(3) Unless otherwise provided in these rules for every appointment to be made in a school, for 1(***) a non teaching post, the candidates eligible for appointment and desirous of applying for such post shall make an application in writing giving full details regarding name, address, date of birth, educational and professional qualifications, experience, etc., attaching true copies of the original certificates. It shall not be necessary for candidates other than those belonging to the various sections of backward communities for whom posts are reserved under sub-rule (7) to state their castes in their applications.*

(4) The age limit for appointment to any post in a school shall be as follows, namely : -

(a) for an appointment to be made to any post in a primary school, a candidate shall not be less than 18 years of age and more than [28] years of age, and the case of candidate belonging to Backward Classes he shall not be more than [33] years of age:

Provided that, upper age-limit may be relaxed in case of women, ex-servicemen and persons having previous experience with the previous permission of the Deputy Director.

(b) for an appointment to be made to any post in any school other than primary school, a candidate shall not be below the age of 18 years.

(5) A letter of appointment order in the Form in Schedule "D" shall be issued to a candidate appointed to the post. A receipt in token of having received the appointment order shall be obtained from the candidate appointed.

(6) Every employee shall within three months of his appointment, undergo medical examination by a registered medical practitioner named, if any, by the Management or otherwise by any registered medical practitioner. The expenses of medical examination shall be borne by the Management. The appointment shall be conditional pending certificate that he is free from any communicable disease and that he is physically fit to be so appointed.

(7) The Management shall reserve 52 per cent, of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows namely :-

(a)	<i>Scheduled Castes</i>	<i>13 per cent;</i>
(b)	<i>Scheduled Tribes</i>	<i>7 per cent;</i>
(c)	<i>De-notified Tribes (A)</i>	<i>3 per cent;</i>
(d)	<i>Nomadic Tribes (B)</i>	<i>2.5 per cent;</i>
(e)	<i>Nomadic Tribes (C)</i>	<i>3 per cent;</i>
(f)	<i>Nomadic Tribes (D)</i>	<i>2 per cent;</i>
(g)	<i>Special Backward Category</i>	<i>2 per cent;</i>
(h)	<i>Other Backward Classes</i>	<i>19 per cent;</i>
	<i>Total :</i>	<i>52 per cent.</i>

(7A) To fill up the posts by nomination, as specified in sub-rule (7), the management shall follow the category-wise and percent-wise

reservation as provided in sub-section (2) of section 4 of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001. (Mah. VIII of 2014), and the Bindunamawali specified in Schedule D-1.

Provided that, to fill up the post by direct recruitment in Group C and Group D for district-wise cadre in the districts as specified in Schedule D-6, an additional reservation shall be applicable for Schedule Tribe as specified in Schedule D-5.

Provided further that, the post of teachers in the Schedule Areas as specified in Schedule D-6 of Thane, Nashik, Nandurbar, Dhule, Jalgaon, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli and Chandrapur, districts shall be fill up from local candidates belong to the Scheduled Tribes, possessing necessary educational qualifications, as decided by the State Government, from time to time.

(8) If the posts specified in sub-rule (7) remain vacant after following the procedure specified in sub-rule (2A), the management shall adopt the procedure laid down in sub-rule (9) to fill up the said vacancies.

(9) the posts specified in sub-rule (7) and clause (a) of sub-rule (10), shall not be filled in by the candidates belonging to the other castes, tribes, categories or classes, than the castes, tribes, categories or class for which the posts are reserved.

(10) (a) The Management shall reserve 24 percent of the total number of posts (or vacancies) of Heads and Assistant Heads for the members of Scheduled Castes, Scheduled Castes converts to Buddhism, Scheduled Tribes, Denotified Tribes and Nomadic Tribes as follows, namely :

<i>(i)</i>	<i>Scheduled Castes and Scheduled Castes converts to Buddhism</i>	<i>13 per cent</i>
<i>(ii)</i>	<i>Scheduled Tribes including those living outside the specified areas</i>	<i>7 per cent</i>
<i>(iii)</i>	<i>Denotified Tribes and Nomadic Tribes</i>	<i>4 per cent</i>

(b) Deleted

(10A) To fill up the posts by promotion, as specified in clause (a) of sub-rule (10), the management shall follow the Bindunamawali as specified in Scheduled D-2.

(10B) To fill up the posts by nomination in smaller cadre, the

management shall follow the Bindunamawali as specified in Schedule D-3;

Provided that, to fill the post by direct recruitment in Group C and Group D for district-wise cadre, an additional reservation shall be applicable for the Schedule Tribes as specified in Schedule D-5.

(10C) To fill up the post by promotion in smaller cadre, the management shall follow the Bindunamawali as specified in Schedule D-4.

14. Section 5 of the M.E.P.S. Act, 1977 mandates to the Management that before filling up any vacant post, the Management should ascertain from the Education Office, whether there is any suitable person available for the post and if such person is available, the Management shall appoint that person in such vacancy. The very purpose behind this provision is that the Education Officer of the District is required to maintain the list of a surplus teachers. Therefore, such surplus teachers should get appointment and government should not be burdened financial loss, so also the entire recruitment exercise can be curtailed if eligible person from amongst surplus teacher is appointed on the available vacant seat.

15. Under Rule 9 of the M.E.P.S. Rules, 1981, the procedure is prescribed, as to how, the recruitment exercise should be undertaken by the Management. Rule 9 (7) of the said Rules, prescribed that it is the common knowledge that while filling up this percentage of reserved post, the 100 point roster prepared by the State Government is to be made applicable and accordingly on the basis of point of

roster available in the school, the post is required to be filled in of the reservation of various categories.

16. It is further pertinent to note that as per Rule 9 (2) of the M.E.P.S. Rules, the purpose of advertisement issued by the Management is that the Management should first verify from the backward cell about the availability of vacancies as per 100 point roster and specify the Management from which category the permission can be granted to fill up the vacant post. As such, after verification of the roster, the backward cell provides the vacancy from a particular category and then by relying upon the said roster, the Education Officer grants permission to the respective Management to fill up the post.

17. It is stated that Section 5 read with Rule 9 of the M.E.P.S. Rules provides mechanism and purpose for which the advertisement is mandatory for filling up the vacant posts in the school. Therefore, according to us, for every appointment, which is to be made by the Management, the compliance of Section 5 read with Rule 9 of the said Act/Rule is mandatory. Our view is fortified by the judgment of this Court in case of *Vasant Shikshan Prasarak Mandal Through its President and others .vs. State of Maharashtra and others, reported in 2016 SCC OnLine Bom. 14947*, this court held in para 32 as

under :

32. *“There appears to be, in recent times, a growing trend of appointing new teachers by ignoring eligible surplus teachers. I find it to be an alarming situation. Surplus teachers are maintained in a list with the Education Officer of the Zilla Parishad in each district with the benevolent object of ensuring their absorption whenever permanent vacancy arises. The Managements as like petitioner Nos. 1 and 2 herein, ignore important provisions of the MEPS Act, 1977 by not complying with the mandate of absorbing surplus teachers and by appointing fresh hands. Despite the Government Resolution dated 25-10-2004 being applicable, approvals are sought by appointing fresh hands in violation of the proviso to section 5(1). It cannot be ruled out that in many cases such approvals may have been granted by the Education Department knowingly or unknowingly. As a consequence of such acts of the Management, those surplus teachers, who are permanent and because of having been declared surplus, have virtually lost their employments, are overlooked as the Managements prefer to appoint fresh hands.”*

18. So also, in case of ***Gajanan s/o Marotimeharkar and others .vs. State of Maharashtra and others, reported in 2022 SCC***

OnLine Bom. 1023, observed in Para 19, 30, 33 & 42 as under :

19. *Conjoint reading of the above rules clearly indicates that one can not be appointed as a teacher unless the candidates possess the requisite qualification. The qualification and the procedure laid down in the Act and Rules for selection is mandatory. The Management cannot deviate from the Law prescribed for the appointment of the Staff in private schools. It must follow the procedure and appoint the candidates possessing the qualifications prescribed under the Rules of 1981. The appointments made deviating from the rules cannot be legitimized. The Management cannot say that advertising the vacancy and holding an interview to select the candidate is in complete compliance with the provisions of the M.E.P.S. Act and rules*

in the absence of permission from the competent Authority. No Management on its own can dilute the provisions of Law as per its convenience.

30. We may add to the above observation that the purpose behind the condition imposed in the proviso to Section 5 (1) of M.E.P.S. Act, is to accommodate the surplus persons, who have priority over the vacant posts. They being surplus, the time spent on the recruitment may be saved, and that may eliminate the hardship to be caused to the students in imparting the Education. The students may get experienced teachers. Be that as it may, though Management has the power to appoint the Staff but is controlled by M.E.P.S. Act and Rules. It has no absolute power to make its own practice and procedure. It must adhere to the rules and regulations. The procedures for public employment are for maintaining equal opportunities to avoid chaos, bias, and monopoly. Violating the mandate of Law causes chaos and mess, and the possibility of illegality cannot be ruled out. Assuming for the sake of argument that the Education or other responsible officer fails to respond to the request of the Management ascertaining about the surplus persons to the Management. It does not relieve the Management from following the procedure laid down in rules 9, (2A), and (2B) read with clause (vii) of IInd Entry in Schedule B of the M.E.P.S. Act. None of the judicial pronouncements on the exceptions to the G.R. 02.05.2012 precluded the Management from following the due procedure. Hence, the appointments made deviating from the procedure prescribed for the appointments of the Staff can not be legitimized.

33. The Court cannot close its eyes if any illegality is discovered though not pointed out by either party to the proceeding. The Courts must find out the truth and eliminate the illegalities. The Courts are the caretaker of the citizens, not only coming to the Courts but also the citizens who do not come to the Courts. The Courts must protect the absent party's interest.

42. On the above premise, it is to be considered whether the Court may exercise its discretionary jurisdiction under the principle of equity in their favour. He who comes into the equity must come with clean hands and is entitled to claim the equity. The doctrine of equity relates to the past conduct of the parties. It must be established that the party claiming equity must have been involved in an equitable act

himself in the past. If such a person is involved in fraud or misrepresentation with respective cases, then he may not demand equity. Such a person must be fair and must come with clean hands.”

19. In the present case, admittedly without obtaining prior permission the advertisement was issued and appointment of the Petitioner has been done by the Management. The clarification is given that as per the roster available with the Management, there were backlog of 6 posts from Other Backward Class category and, therefore, it was justified on their part to issue the advertisement without permission. But the fact cannot be denied that the roster which relied upon by the Petitioner also shows the backlog of Scheduled Castes, Scheduled Tribes and Nomadic Tribes and Special Backward Class etc. Therefore, in such exigency, according to us, the permission from the backward cell was required to be obtained or at least, by applying the 100 point roster, it was necessary to ascertain as to which posts are required to be filled in from other category to maintain the reservation prescribed under Rule 9 (7) of the M.E.P.S. Rules. But there is no explanation available on record to substantiate this factual position. Hence, we are not satisfied with the submission of the Petitioner that only because there was a backlog of 6 posts from Other Backward Classes category, therefore, prior permission was not necessary.

20. It is further pertinent to note that in the present petition, appointment of Petitioner was made on 28.06.2011 as per the appointment order. It is stated by the Petitioner that Respondent No.5 on 15.11.2011 forwarded the proposal to the Education Officer. But Education Officer denied the receipt of such proposal by his office on 15.11.2011. Therefore, Petitioner has filed certain affidavit on record stating that it was the practice of the Respondent No.3- Education Office not to put their stamp of receipt on document which they have submitted to Education office. Therefore, considering the prevailing practice, the document relied by them should be considered as a correct submission.

21. In this regard, we have perused the affidavit filed by Respondent Nos.4 and 5 dated 01.04.2024. The document enclosed along with the said affidavit during period from 2011 to 2012 clearly shows that though there is no stamp of the Education Office, however, there is at least stamp of the school and the signature of the concerned clerk/officer of Education Office was recorded on the said documents showing that on that date the document was received by the office of Education Officer. However, the document relied by the Petitioner dated 15.11.2011 do not disclose stamp of outward number of school nor the signature of the concerned person of Education Office, therefore, the claim made by the Petitioner that on

15.11.2011 document was submitted to the Education Office seems to be doubtful.

22. It is further pertinent to note that if the proposal since the year 2011 was pending and Education Officer was not taking decision on the said proposal, it is expected from Respondent Nos.4 and 5 to approach the Education Office before approaching to the State Government. However, in absence of any such event, the Under Secretary Shri S.D. Mane issued the communication directly in the name of the Education Officer dated 17.12.2018. So it is surprising how Petitioner and Respondent Nos.4 and 5 were expecting that their proposal is going to be rejected. Therefore, this Court has rightly passed the order dated 11.03.2024 and seek explanation from the Secretary of the School Education Department.

23. It is pertinent to note that the explanation tendered in the matter is under the signature of Principal Secretary, vide affidavit dated 07.05.2024, which is reproduced above. It is crystal clear from the said affidavit that during the said period no document under the signature of Shri S.D. Mane was issued from the said office. Along with the affidavit, Respondent no.1 has also produced the communication dated 12.02.2021, wherein name of the Petitioner is nowhere disclosed as like of other employees in whose favour

communications were issued on 17.12.2018. According to us, such affidavit sworn by the Principal Secretary, School Education Department, is sufficient to held that there was no communication issued dated 17.12.2018 in case of petitioner. Therefore, the manner, in which the Petitioner tried to impress the Education Officer, is found to be unjustified in the matter and we have a reason to believe that under false pretext the Petitioner and Respondent nos.4 and 5 pressurized the Education Officer to decide the issue of approval in absence of permission of the Education Officer. Hence, the person who did not approach with clean hands is not entitled for any equity and, therefore, we are of the opinion that the Petitioner is not entitled for any equity in the present matter.

24. According to us, once it is held that the permission of Education Officer is necessary for filling up the vacant post, the consequential action taken by the Management automatically vitiates. Furthermore, it is the mandate of the law that the Management shall follow the rule of reservation in the manner prescribed under Rule 9 of the M.E.P.S. Rules. The appointments made deviating from the rules can not be legitimized. The management can't say that advertising the vacancy and holding an interview to select the candidate is in complete compliance with the provisions of M.E.P.S. Act and Rules in the absence of permission from the Education

Officer. According to us, this act of the Respondent nos.4 amounts to violation of the reservation policy framed by the statute. Therefore, the reason recorded by the Education Officer that without fulfilling the backlog from available category is justified in the matter.

25. On the issue of the delay, it is clear that though the appointment of the Petitioner is shown to be made in the year 2011, it is clear that for a period of 9 years, the Petitioner did not approach to the Respondent-Education Officer for getting updates of the matter. From the record, it is clear that after 2011, first time approached on 16.12.2020. Hence, the Education Officer is justified to reject the approval on the count of delay by recording the reason that there is no communication in between the said long period. As such, we are of the opinion that there is no fault in the order passed by the Education Officer. Accordingly, there is no need of any interference of this Court in the matter.

26. In the circumstances, petition is devoid of merit and hence the writ petition is **dismissed**. Application, if any, shall stand disposed of accordingly. Rule is discharged. No costs.

(Pravin S. Patil, J.)

(Smt. M.S. Jawalkar, J.)