



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

WRIT PETITION NO.7278 OF 2024

- 1) Shri Shivshankar Vithal Gaikwad,
Aged about 32 years,
Occupation-Service,
R/o. Mukkam Post Sakarkheda,
Taluka Sindkhed Raja,
District-Buldhana.
- 2) Pooja Sanjay Kakde,
Aged about 31 years,
Occupation-Service,
R/o. Near Mahetre Hospital,
Buldhana, Tehsil and Dist.
Buldhana.
- 3) Priyanka Pundalik Thombre,
Aged about 33 years,
Occupation-Service,
R/o. At Milind Nagar,
Buldhana, Tehsil and Dist.
Buldhana.
- 4) Shubhangi Kisanrao Rathod,
Aged about 32 years,
Occupation-Service,
R/o. At Palaskhed Naik,
Post Padali, Tehsil and Dist.
Buldhana.

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Petitioners

..Versus..

- 1) The State of Maharashtra,
Through Principal Secretary,
Other Backward Bahujan Kalyan Vibhag,
Extension Building, First Floor, Madam

Cama Road, Hutatma Rajguru Chowk,
Mantrayala, Mumbai-32.

- 2) The Director,
Other Backward Bahujan Kalyan Vibhag,
Church Road, Pune, Pune.
- 3) Regional Deputy Director,
Other Backward Bahujan Kalyan Vibhag,
Amravati Division, Amravati.
- 4) Assistant Director, Other Backward
Bahujan Kalyan Vibhag, Buldhana.
- 5) Primary and Secondary Ashram School
Palaskhed Nago, through its Headmaster
Tehsil and Dist. Buldhana.
- 6) Shri Vasantao Naik Shikshan Sanstha
Palaskhed Nago, Tehsil and Dist. Buldhana,
through its Administrator, Regional
Deputy Director, Other Backward Bahujan
Kalyan Vibhag, Amravati Division,
Amravati.
- 7) Rajesh Bansilal Rathod,
Aged about 55 years,
Occupation-Agriculturist,
R/o. Varsha Heights, Suwarna Nagar,
Buldhana, Near Gaikwad Hospital,
Tehsil and Dist. Buldhana. ..

Respondents

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Shri Firdos T. Mirza, Senior Advocate assisted by Shri Syed Owais
Ahmed, Advocate for Petitioners.
Shri A.M. Joshi, AGP for Respondent Nos.1 to 4.
Shri Z.Z. Haq, Advocate for Respondent No.5.
Shri R.G. Kavimandan, Advocate for Respondent No.6.
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**CORAM : SMT. M.S. JAWALKAR AND
PRAVIN S. PATIL, JJ.**

**RESERVED ON : 25.08.2025.
PRONOUNCED ON : 29.09.2025.**

JUDGMENT (Per : Pravin S. Patil, J.)

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

2. In the present petition, the petitioners, who are the Teachers appointed by the Management, approached to this court challenging the order dated 2.12.2024 passed by respondent no.2-Director Backward Class, Bahujan Kalyan Vibhag, Pune, whereby the recruitment exercise conducted by the Management is held illegal.

3. The petitioners are admittedly possessing the qualification of trained graduate teacher. The petitioner nos.1 and 2 belong to Other Backward Class category, petitioner no.3 belongs to Scheduled Caste category and petitioner no.4 belongs to Open Category. The respondent no.6 Shri Vasantrya Naik Shikshan Sanstha, Palaskhed Nago, Taluka and District-

Buldhana runs the Primary Ashram School at Palaskhed Nago. There is a dispute between the members of the Management. At present, no change report is finally accepted and only two persons are shown on the Schedule-I of Joint Charity Commissioner.

4. It is also pointed out that in the respondent no.5 school, there are 111 students are taking primary education. However, due to retirement of three teachers and one teacher had tendered resignation, the posts were lying vacant. As such, there was no teacher to teach the students in the school.

5. It is pointed out that one Atmaram Rathod, who was the Treasurer as per Schedule-I of the respondent no.6 Trust/Society, moved application on 21.3.2023 to the Deputy Director of Other Backward Bahujan Kalyan Vibhag, Amravati Division, Amravati that due to superannuation and resignation of the teachers in the school, the society be granted permission to fill up the vacant posts in the school.

6. The Regional Deputy Director of Other Backward Bahujan Kalyan Vibhag, Amravati forwarded the said proposal

to the Additional Chief Secretary of Other Backward Bahujan Kalyan Vibhag, Mantralaya, Mumbai.

7. On the recommendation of respondent no.3, the State Government i.e. respondent no.1, by his order dated 5.4.2023, granted permission to fill up three posts of Assistant Teacher at Primary Ashram School Palaskhed Nago and one post at Secondary Ashram School, Palaskhed Nago. The permission was granted subject to verification of roster and absorption of excess/surplus teachers if available in the district.

8. In view of the order issued by the respondent no.1-State Government, the respondent no.3-Regional Deputy Director, by his order dated 11.4.2023 granted permission to the respondent no.6 to issue the advertisement. While granting permission, it was clarified that the educational qualification and the issue of reservation be strictly followed in the matter. In view of permission granted by the respondent no.3-Regional Deputy Director, the respondent no.5 in the capacity of Headmaster and Secretary of Selection Committee issued advertisement on 18.4.2023 in daily newspaper 'Dainik Sakal'

and 'Dainik Deshonnati'. According to the advertisement, the three posts of Shikshan Sevak at Primary Ashram School, Palaskhed were earmarked for Scheduled Caste, Other Backward Class and Open Category and one post of Shikshan Sevak at Secondary Ashram School was earmarked for Other Backward Class category.

9. During this recruitment exercise, the Treasurer of the Society namely, Atmaram Kisan Rathod was expired. The other group of respondent no.6-Trust challenged the recruitment exercise before this court vide Writ Petition No.2506/2020. This court by the order dated 21.4.2023, restrained the Management from going ahead with the recruitment exercise till further orders of the court. As a result, the respondent no.5 has issued the public notice stating that due to untimely death of Treasurer and stay granted by this court, the written examination and interview is stayed till further orders.

10. It is pointed out that due to dispute between the members of management, the respondent no.1 by his order dated 21.6.2023 decided to appoint Administrator over

respondent no.5 school and accordingly respondent no.3 was appointed as an Administrator.

11. The fact of appointment of Administrator was then brought to the notice of this court in Writ Petition No.2506/2020. This court considering the same as a significant development permitted to continue the recruitment process initiated by respondent no.5-Headmaster. The directions were given to the Administrator to constitute an appropriate committee to conduct the interviews. It was made clear that any appointments made shall be subject to further orders of the petition.

12. The respondent no.5, therefore, on 28.7.2023 issued public notice stating that the stay granted by this court has been lifted up and accordingly as per the advertisement dated 18.4.2023, the written examination and interviews will be held on 2.8.2023. It is further clear from the record that Administrator, by his communication dated 27.7.2023, requested the Assistant Commissioner Social Welfare, Buldhana; District Employment Exchange Officer; Project Officer Tribal

Development, Akola; District Women and Child Development Officer, Buldhana and Head Master of the Ashram School, Palaskhed Nago, requested to attend the interview which is scheduled on 2.8.2023 in the capacity of members of the committee. Accordingly, interviews of the candidates appeared in pursuance of the advertisement were held. From the proceeding, which is placed on record, it is seen that the committee members, after their discussion, decided to appoint the petitioner and the said proceeding bears the signatures of the committee members.

13. In pursuance of the selection of the petitioners, the appointment orders came to be issued to the petitioners by respondent no.5, vide appointment order dated 10.8.2023. The appointment orders clearly shows that the respective category of each petitioner in which their appointment was made in the school. So also the petitioners enclosed their caste certificates in the matter to substantiate the fact they belongs to the same category.

14. After the appointment of the petitioners, the proposal was forwarded for grant of approval to the respondent no.3. The respondent no.3, by his order dated 10.11.2023 granted approval to the services of the petitioners. Hence, the petitioners from their respective date of appointment are continued in service against the post of Assistant Teachers and discharging their duties.

15. In the meantime, pending Writ Petition No.2506/2020 was finally decided by order dated 20.8.2024. While deciding the petition, this court recorded that by the order dated 14.8.2023 the Administrator has handed over the charge to the Executive Committee of the respondent no.6 Society. Accordingly, this court, by observing that as the appointments were permitted to be made subject to decision of this writ petition, the petitioner–Trust therein are permitted to canvass the issue about the legality and validity of the appointments made by respondent no.3 before the Commissioner, Social Welfare, Pune. This court made it clear that before Commissioner, Social Welfare, Pune, only the trustees shown in Schedule-I can appear on 2.9.2024 with an

advance intimation to the newly appointed employees. As such, the persons who are shown in Schedule-I are only permitted to appear before the Commissioner, Social Welfare, Pune.

16. In view of order of this court, the petitioners, who were not the party to the writ petition, were received the notice from the Headmaster of the school stating that the hearing is scheduled before the Commissioner, Social Welfare, Pune on 4.9.2024 and accordingly they should remain present before the authority. It is also pointed out that the respondent no.3, by his explanation to the Other Backward Baujan Kalyan Vibhag, Maharashtra State, Pune by his communication dated 3.9.2024, clarified that as per the order dated 14.8.2023 he has to hand over the charge to the legal Management. However, he is facing difficulty to whom the charge should be handed over because there is no authorize President/Secretary is in existence. Therefore, he requested to issue appropriate guidance in the matter. Along with this, it is specifically stated that respondent no.7 Shri Rajesh Kisan Rathod is not the authorized member of the society nor even a trustee. As per the order and directions of this court he has no powers to participate in the proceeding

scheduled for hearing by the authority.

17. In the background of above said factual position, the hearing was conducted by respondent no.2 and by the impugned order dated 2.12.2024, the objection raised by respondent no.7 is accepted and thereby the recruitment exercise undertaken by respondent no.6 society is held illegal. The same is under challenge in the present petition.

18. In response to the notices issued by this court to the respondents, the respondent no.2 defended the order by stating that in the impugned order, the reasons are recorded that there was a lack of transparency, no categorization of applicants, no verification of caste certificates and violation of Government Resolution whereby guidelines were issued as to how the appointments should be made, therefore, the order passed by respondent no.2 is correct and legal, there is no need of any interference of this court in the matter.

19. The respondent no.7, on whose complaint, the recruitment exercise was set aside by respondent no.2, failed to point out in what capacity he appeared before the respondent

no.2. He stated that the roster was not properly followed while making appointment in the school and secondly the guidelines laid down by the State Government i.e. to conduct the recruitment exercise through Pavitra Portal is not followed in the matter and petitioners are not possessing the qualification of TET, hence the reasons recorded by the respondent no.2 in the impugned order are justified in the matter.

20. The respondent no.5 i.e. Head Master supported the case of the petitioners and specifically pointed out that in the Management there is a dispute. One group is headed by Totaram Rathod and another by Atmaram Rathod, whose names appeared in Schedule-I of the Trust. He pointed out that the group headed by Totaram Rathod has filed the Writ Petition No.2506/2020 without appreciating the fact that there was a requirement in the school to teach the students who are 111 in number. He also pointed out that after the vacation of stay by this court in Writ Petition No.2506/2020 the respondent no.3 has undertaken the entire recruitment process and accordingly the appointments are made in the school. He pointed out that the petitioners furnished the documents of their caste as well as

their educational qualification including TET/CTET certificates. Therefore, the objections raised by respondent no.7 are totally incorrect in the matter.

21. In the background of above said factual position, we have proceeded to decide the present petition by hearing respective advocates appeared in the matter.

22. At the outset, it is stated that Respondent No.5 is a Ashram School run by Private Management i.e. Respondent No.6. The school is recognized by Other Backward Bahun Kalyan Vibhag. There is no separate enactment is provided for the employees working in a Primary Ashram School and Secondary Ashram School to govern the service conditions or to follow the recruitment exercise by Respondent Nos.1 and 2. Normally, the provisions of Maharashtra Employees of Private Schools are followed while undertaking the exercise of Primary and Secondary School teachers of Ashram School run by private Management. Hence, in the present case also, the general principles laid down under the Maharashtra Employees of Private Schools (Conditions of Service) Act,1977 And Rules

framed thereunder are required to be followed while undertaking the exercise of recruitment.

23. In the present case, it is admitted fact that there are 111 students in the respondent no.5 Ashram School and 4 teachers were appointed to teach those students. However, out of 4 teachers, 3 teachers are superannuated from service and 1 teacher had tendered resignation. Therefore, there were no teachers in the school. Hence, the management sought permission from the respondent no.3 to fill up the vacant post in the school. The said fact was verified by the respondent no.3 and after verification of the same, recommended to the Government/Respondent No.1 to grant permission to fill up 4 vacant posts in the school. In the light of recommendation of respondent no.3, respondent no.1, by his order dated 5.4.2023, granted permission to fill up the post.

24. The Respondent No.3, then by his order dated 11.4.2023 granted permission to issue the advertisement by directing that all the rules and regulations should be followed while issuing the advertisement. Perusal of the advertisement

shows posts were earmarked for Scheduled Caste, Other Backward Class category and Open Category. Therefore, we are of the opinion that advertisement was issued by following due procedure of law and there was no reason for the respondent no.2 to held that proper procedure is not followed in the matter.

25. From the advertisement, it is further clear that specific qualification was prescribed for each posts and, thereafter, the written test as well as interviews were conducted by the committee members as per the directions issued by this court vide order dated 25.7.2023. Hence, it can be said that in view of direction of this court, the procedure was conducted by the then Administrator of the school. The document placed on record clearly shows that the committee members consist of the Assistant Commissioner, Social Welfare, Buldhana, District Employment Exchange Officer, Project Officer, Tribal Development, Akola, District Women and Child Development Officer, Buldhana and Head Master of the Ashram School, Palaskhed Nago were present and put their signatures to the proceedings and, thereafter, the Administrator issued directions to the respondent no.5 and accordingly the appointments orders

were issued to the petitioners. Hence, the recruitment exercise is done in the presence of five competent officers of the various departments in the matter.

26. Not only this, after the appointment of the petitioners their proposal was forwarded to the Other Backward Class Bahujan Kalyan Vibhag Amravati for grant of approval. According to our knowledge, the approving authority requires to verify the qualification of the candidate and his eligibility for the post on which he was appointed. It is seen from the record that the respondent no.3, without any objection, granted approval to the appointment of the petitioners on 10.11.2023. Hence, we are of the view that once approval has been granted meaning thereby the eligibility of the petitioners was tested by the authority and as same was found to be correct, the approvals were granted in favour of the petitioners.

27. In the present petition, it is clear that due to the dispute in the management, the rival group was against the appointment of the petitioners. More importantly the respondent no.7 has played a pivotal role of lodging complaint

against the appointment of the petitioners. This court, while deciding Writ Petition No.2506/2020, specifically observed that only the trustees shown in Schedule-I can only appear before the respondent no.2 and no other persons will be permitted to participate in the enquiry and this fact was further specifically brought to the notice of respondent no.2 by respondent no.3, vide his communication dated 3.9.2024. But we noticed that respondent no.2 failed to consider the directions issued by this court. On the other hand, in violation of the directions issued by this court, it is recorded in the impugned order that he being acting as quasi-judicial authority to decide the issue, he can permit the respondent no.7 to submit his submission before him. This fact itself demonstrate that respondent no.2 was more interested to entertain the grievance of respondent no.7 rather than directions issued by this court. This act of respondent no.2 is serious and according to us, when this court directed him to grant hearing to the trustees shown in Schedule-I only, permitting the respondent no.7 is contrary to the order and same is not appreciated.

28. One of the argument raised by respondent no.7 in the matter that after every three years, roster is required to be examined and if same is not updated and recruitment is done, then same is illegal. In the present petition, the perusal of the record shows that last verification of the roster was done by the management in the year 2019. However, immediately thereafter there was a surge of Pandemic of Covid-19 and everything was stalled till year 2021-2022. Furthermore, there were no appointment in the school after the retirement and resignation by the teachers. Therefore, according to us, there was no illegality to consider the roster of year 2019 for recruitment purpose. The respondent no.7 did not point out any provisions of law which states that it is mandatory that after every three years, the roster is to be verified. Hence, in view of this factual position merely because roster was not examined or updated particularly in the facts and circumstances of present case, recruitment exercise cannot be held illegal.

29. In respect of Pavitra Portal, the statement made by the petitioners that in other Backward Ashram School, the policy till date is not operated and in no Ashram School run by

respondent No.2-Department, the appointments are made through Pavitra Portal. This fact is not denied by the respondents. So also, the petitioners pointed out that they are possessing the requisite qualification for the post which is also not denied by the respondents in the matter.

30. In the present petition, the bare perusal of the impugned order itself demonstrates that the respondent no.2 under the caption of selection committee has recorded the fact that seven members of the committee were present in the recruitment exercise. Under the same caption, it is mentioned that candidates while submitting their application did not mention their castes and category. But below that chart was reproduced in the impugned order which itself shows that against each candidate's his caste and qualification is recorded. The said chart further shows the mark secured by every candidate appeared in the recruitment exercise. Hence, it is clear that respondent no.2 did not apply his judicial mind while deciding the matter.

31. Not only this, it is clear from the impugned order itself that the seven members committee has recorded how many candidates applied from reservation category and accordingly prepared the list of the successful candidates from each category. So also the candidates who were successful, their names and the marks obtained by them was also recorded. From the perusal of impugned order, we are of the opinion that the respondent no.2 has recorded perverse finding about not following the procedure as per the rules in the matter.

32. The perusal of impugned order shows that respondent no.2 has given more emphasis on the issue that the reservation policy was not followed in the matter. However, from the record and particularly from the advertisement, it is clear that the posts which were advertised were specifically earmarked for particular reservation category. This fact is not disputed in the matter. So also, as stated above in the impugned order, it is recorded that category-wise candidates were considered for each post and accordingly the recruitment exercise was done. Hence, we are of the opinion that the impugned order is nothing but non application of judicial mind

and recorded perverse finding in the matter.

33. For the aforesaid reasons, we are satisfied that there is no illegality while appointing the petitioners in the school. The complaint lodged by the respondent no.7 was with an ulterior motive. Furthermore as per direction of this court was not permitted to participate in the hearing conducted by Respondent No.2. But contrary to direction of this court, Respondent No.2 permitted him to participate and by relying his objection passed the impugned order. Record shows Schedule-I Trustees raised no objection of any kind before the respondent no.2 against the appointment of petitioners in the matter.

34. It is thus clear that Respondent No.2 without applying his judicial mind and by recording perverse finding passed the impugned order. Therefore, indulgence of this court is necessary in the matter. Hence, we proceed to pass the following order :

ORDER

- (1) The Writ Petition is allowed.

(2) The impugned order passed by the respondent no.2 Director, Other Backward Class, Bahujan Kalyan Vibhag, Pune dated 2.12.2024 is hereby quashed and set aside.

(3) It is hereby declared that the petitioners appointments against the respective posts of Shikshan Sevak/Teachers dated 10.8.2023 was by following due procedure of law and are entitled to be continued on their respective posts with all statutory benefits.

(4) No order as to costs. Rule in above terms.

(Pravin S. Patil, J.)

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