



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

WRIT PETITION NO. 7862 OF 2025

Vivekananad Seva Sangh, Thr. Its Sec. Arvind Gulabrao Tatte
 Vs
 State Of Maha. Dept. Of School Education, Thr. Its Secretary And Others

Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
 or directions and Registrar's order

Court's or Judge's Order

Mr. U.J. Deshpande, counsel for petitioner.
 Ms. T.H. Khan, AGP for respondent Nos. 1 to 4.

CORAM : ANIL S. KILOR and RAJNISH R. VYAS, JJ.
DATE : 10/12/2025.

1. The prayer made in this petition is to hold and declare that the order dated 7/5/2025 is arbitrary and perverse. A further prayer is made to direct the respondent No.2 to verify and approve the 100-Point Roster of the schools run by Petitioner-Trust expeditiously.
2. By communication dated 7/5/2025, respondent No.2 refused to approve the 100 Point Roster, placing reliance on Government Resolution dated 5/12/1994 and Section 4 (2) of the *Maharashtra State Public Services Reservation for Schedules Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes Act, 2001*.
3. Learned counsel for the petitioner briefly submits that the issue involved in this petition is covered by the judgment in case of ***Nilesh Mahadeorao Dhakare Vs State of Maharashtra and others reported in 2014 (2) Mh.L.J.***, more particularly paragraphs 8, 9 and 10 which reproduced as under :-

“8. The object behind enacting the Act of 2001 is to provide for the reservation of vacancies in public services and posts in favour of persons belonging to the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes of citizens. The constitutional right of reservation is thus sought to be implemented by providing for reservation in various public services. On reading of the Act of 2001 as a whole, it is clear that Section 4(1) does not permit posts reserved for a particular category to be filled in by candidates not belonging to such category. However, the same is subject to the exception as provided by the proviso to Section 6(1) of the Act of 2001 namely that if on the date of commencement of the Act of 2001 any Government order regarding filling up the posts in case of non-availability of Backward Class candidates are in force, the same shall continue to be in force unless modified or revoked by the Government. Further in view of provisions of Section 14 of the Act of 2001 the provisions of the Act of 2001 are in addition to and not in derogation of the provisions contained in any other Act for the time being in force. Thus it is clear that if there is any other Government order with regard to filling up the posts in case of non-availability of backward class candidates on the date of commencement of the Act of 2001, the same shall continue to be in force unless modified or revoked.

9. Insofar as the Act of 1977 is concerned, Section 5 thereof casts an obligation on a Management of a private school to fill in every permanent vacancy in the manner prescribed. Rule 9 of the Rules of 1981 deals with the manner of appointment of staff and Rule 9(9) deals with the manner in which a teaching post which is reserved for Backward Classes is to be filled in.

Thus, while the object of the Act of 2001 is to provide for reservation of vacancies in public services, Rule 9(9) prescribes the manner in which a reserved vacancy is to be filled in. It would therefore be necessary to harmoniously construe provisions of the Act of 2001 and the Rules of 1981 so that the object sought to be achieved by the Act of 2001 is not defeated and the manner in which such

reserved vacancy is to be filled in as prescribed by Rule 9(9)(a) is not violated. A purposive construction of said provisions is therefore necessary.

10. Thus viewed, the proviso to Section 6(1) of the Act of 2001 provides the answer to the issue as raised in the writ petition. While Section 6(1) of the Act of 2001 permits carrying forward of a reserved vacancy, the proviso thereto permits continuation of Government orders that are in force, regarding filling up of reserved vacancies till such Government orders are revoked or modified. As the provisions of Rule 9(9)(a) of the Rules of 1981 continue to hold the field and same were in force even prior to the Act of 2001 coming into force, in matters relating to appointment of teaching staff for the vacancy reserved for a person belonging to particular category of backward class, it would be permissible to fill in said post if the candidate belonging to category of backward class for which vacancy is reserved is not available by selecting a candidate from other remaining categories in the order specified in Sub Rule (7) of Rule 9. Hence in view of a specific provision namely Rule 9(9)(a) of the Rules of 1981 being in force even today, the same would continue to operate unless modified or revoked by the Government as prescribed by the proviso to Section 6(1) of the Act of 2001. The provisions of the Act of 2001 being in addition to and not in derogation of the provisions contained in other Act for the time being in force, full effect will have to be given to the provisions of Rule 9(9)(a) of the Rules of 1981. It cannot be doubted that the Rules of 1981 that have been framed by the State of Maharashtra pursuant to provisions of Section 16 of the Act of 1977, would have to be put on a higher pedestal than a Government order as contemplated by proviso to Section 6(1) of the Act of 2001.”

4. Learned counsel for the petitioner accordingly submits that while passing the order dated 07/05/2025, the mandate of law as laid down in the above judgment ought to have been considered by the respondent authority. According to him, the respondents have not pointed out any proper deficiencies in the proposal submitted by the Petitioner-Trust for verification and approval of the 100 Point Roster.

He further submits that if any deficiencies are pointed out, the Petitioner-Trust would remove the same immediately.

5. Be that as it may, all the issues raised in the petition can be directed to be decided by the respondent No.2 by setting aside the order dated 7/5/2025. The said order 07/05/2025 nowhere shows that the law laid down in the case of *Nilesh Mahadeorao Dhakare* referred (supra) has been considered.

6. That being so, we quash and set aside the order dated 07/05/2025 and direct the petitioner and the representatives of respondent Nos. 3 and 4 to appear before the Assistant Commissioner, Backward Cell, Amravati on 22/12/2025 with relevant documents.

7. The respondent No.2- Assistant Commissioner (Backward Class Section), Amravati Division, Amravati is directed to pass a fresh, reasoned order after hearing the respective parties, in the light of judgment referred above, within a period of eight weeks from the date of appearance.

8. In view of the above, the writ petition is **disposed of** accordingly.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)