



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12826 OF 2023

Prakash Daulat Patil,
Age-33 years, Occu:Service,
R/o-At Post Malshevge,
Tq-Chalisgaon, District-Jalgaon.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Primary Education Department,
Mantralaya, Mumbai,
- 2) The Education Officer (Primary),
Zilla Parishad, Jalgaon,
- 3) The Headmaster,
Sane Guruji Vidhya Mandir,
Derabardi, Tq-Chalisgaon,
District-Jalgaon.

...RESPONDENTS

...
Mr. Abasaheb D. Shinde Advocate h/f. Mr. Ashwin V.
Hon Advocate for Petitioner.
Ms. P.J. Bharad, A.G.P. for Respondent No.1.
Mr. Sachin B. Munde Advocate for Respondent No.2.
Mr. L.S. Mahajan Advocate for Respondent No.3.

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**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.**

DATE : 26th JULY, 2024

ORDER :

1. Heard learned counsel for the petitioner, learned AGP for State, learned counsel for respondent No.2 / Zilla Parishad and learned counsel for respondent No.3-institution.

2. The petitioner claims that he has been appointed on the post of assistant teacher in Sane Guruji Vidhya Mandir, Derabardi, Taluka-Chalisgaon, District-Jalgaon. He is challenging the order dated 21st September 2023 passed by the Education Officer (Primary), Zilla Parishad, Jalgaon, whereby the approval sought to the appointment of the petitioner has been declined on two grounds, namely, (i) that the proposal seeking approval to the appointment as assistant teacher was sent after five years from the date of appointment and (ii) that the appointment was not through the *Pavitra Portal* as per the requirement of the rules.

3. In respect of the ground that the appointment was not made through the *Pavitra Portal*, it has been argued by the learned counsel for the petitioner that the appointment of the petitioner was made on 1st June 2018, whereas the Pavitra Portal started functioning with effect from 20th June 2018 and accordingly the insistence by the Education Officer for appointment of the petitioner through *Pavitra Portal* in the instant case is not justified. So far as the late submission of the proposal seeking approval to the appointment of the petitioner as assistant teacher to the Education Officer is concerned, learned counsel for the petitioner stated that under the Rules / Government Resolutions, no time limit is provided. Further, to send the proposal for approval to the appointment to the Education Officer was the responsibility of the management of the school and because of the inaction on the part of the management of the school, the petitioner cannot be made to suffer.

4. So far as the ground given by the Education Officer for rejecting the proposal seeking approval to the appointment of the petitioner that the appointment was not made through *Pavitra Portal* is concerned, we may refer to a Division Bench Judgment of this Court, dated 30th November 2022 passed in ***Writ Petition No.2187 of 2020 (Rajesh S/o Padmakar Bhangale and another vs. the State of Maharashtra and others)***, wherein it has been held that admittedly the *Pavitra Portal* was not operative till 20th June 2018. Thus, the said reason indicated in the order cannot be said to be justified.

5. However, as regards the delay in submission of the proposal seeking approval of appointment of the petitioner, we may observe that though the Rules / Government Resolutions do not provide any time limit for submitting such proposals seeking approval of the Education Officer of the Zilla Parishad, however, in an absence of any time limit provided for such purpose under the Rules / Government Resolutions, such

proposals should be made, in our considered opinion, within some reasonable period of time.

6. As per the case put up by the petitioner himself, he was appointed on 1st June 2018 and the proposal by the management of the school seeking approval to his appointment by the Education Officer was sent on 3rd August 2023, which is clearly after a lapse of period of more than five years. It is true that if any lapse has occurred on the part of the school management to send the proposal for appointment of the petitioner with such delay, the petitioner cannot be held responsible for the same. However, it is equally not understandable that a person having been appointed as assistant teacher, will keep on teaching without salary for five years and will not take any action in respect of approval to his appointment as per the requirement of the Rules.

7. Recruitment and appointment of the assistant teachers in private schools are governed by the Maharashtra Employees of Private Schools (Conditions of

Service) Regulation Rules, 1981 (hereinafter referred to as "the Rules of 1981") which have been framed under Section 16(1) and (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter refereed to as "the Act of 1977"). Rule 9 of the Rules of 1981 provides for 'appointment of the staff'. According to Rule 9(2A), the management of the private school has to 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.

8. Even if the submission of learned counsel for the petitioner is accepted that since at the time of appointment of the petitioner which was made on 1st June 2018, *Pavitra Portal* was not functioning, the management of the institution was still required to

advertise the vacancy against which the petitioner claims his appointment, in at least one local newspaper having wide circulation in the region. The management was also required to notify the vacancy to the Employment Exchange Centre of the District and District Social Welfare Officer.

9. In respect of fulfillment of requirement under Rule 9(2A) of Rules of 1981, reliance has been placed by the counsel for the petitioner on an advertisement, which is available at Exhibit-B, appended to the Writ Petition. The advertisement appears to have been published in a weekly newspaper, "Pakshapramukh", in its special edition published on 1st May 2018. The document at Exhibit-B to the Writ Petition discloses that the said weekly newspaper was published from Jalgaon.

10. In respect of the said advertisement published in weekly newspaper "Pakshapramukh", we may observe that once the requirement under Rule 9(2A) of the Rules of 1981 is publication of advertisement in at least one

local newspaper having wide circulation, in our opinion, the said requirement cannot be said to have been fulfilled by publishing the advertisement in a weekly newspaper. From a bare perusal of Exhibit-B appended to the Writ Petition, the circulation of the said weekly newspaper appears to be doubtful. As per the requirement under Rule 9(2A) of the Rules of 1981, the newspaper should have wide circulation. Accordingly, such advertisement, in our opinion, is not as per the mandatory requirement of Rule 9(2A) of the Rules of 1981.

11. Further, we may also note that another requirement for publication of advertisement regarding the vacancy is that it should be notified to the Employment Exchange Centre of the District and District Social Welfare Officer. There is nothing on record which establishes that the vacancy against which the petitioner claims his appointment was ever notified to the Employment Exchange Centre of the District or District Social Welfare Board.

12. Employment of assistant teachers in private schools in the State of Maharashtra are not only governed by a State Legislation i.e. the Act of 1977 and the Rules of 1981, but in aided schools burden of payment of salary of such teachers is also borne by the State exchequer. Accordingly, any such employment lies in the realm of the public employment and hence the recruitment / selection / appointment of such teachers in private aided schools has to be necessarily in conformity with the fundamental right enshrined under Article 16 of the Constitution of India. Rule 9(2A) of the Rules of 1981 requires that the advertisement of vacancy shall not only be published in at least one local newspaper having wide circulation but also that the vacancy will have to be notified to the Employment Exchange Centre of the District and District Social Welfare Officer. The purpose is to provide equal opportunity to all eligible candidates to participate for appointment in public employment. If the vacancy against which the petitioner is said to have been appointed has not been widely advertised, that itself

would be violative of Article 16 of the Constitution of India, which is a fundamental right.

13. For the reasons aforesaid, we do not find any good ground to entertain the instant Petition.

14. Resultantly, the writ petition is dismissed.

15. However, there shall be no order as to costs.

(KISHORE C. SANT, J.)

(CHIEF JUSTICE)

asb/JULY24