
(2022) 09 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No.2784, 2788, 2789, 2801, 2878, 2932, 2941 Of 2019

Jagdish Uttam Vasave And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-09-2022

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 9, 9(7), 9(8), 9(9)
Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 — Section 5, 5(1)

Citation : (2022) 09 BOM CK 0096

Hon'ble Judges : Mangesh S. Patil, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : V. S. Panpatte, A.S. Shinde, S.P. Brahme, A.R. Syed

Final Decision : Dismissed

Judgement

Mangesh S. Patil, J

1. Heard. Rule. The Rule is made returnable forthwith. Learned AGP and the learned advocate Mr. Brahme for the respondent Management waive service in all the petitions. At the joint request of the parties, the matters are heard simultaneously and being disposed of by this common judgment to avoid repetition.

2. This is a group of petitions whereby various teachers and a junior clerk appointed by the respondent Nos.4 and 5 Education Society are challenging the similar orders passed by the respondent No.2 Deputy Director of Education (D.D.E.) cancelling the approval granted by the respondent No.3 Education Officer (E.O.) on similar grounds.

3. Learned advocate Mr. Panpatte would submit that the petitioners were appointed by following due process of law as laid down under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation

Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (herein after referred to as the Act and the Rules). A public advertisement was issued on 17.02.2012 pursuant to which the petitioners applied for the posts of teacher except the petitioner in Writ Petition No.2788/2019 who had applied for the post of Junior Clerk. After the due process they were appointed in the same year but on different dates. The E.O. granted approval to their appointment on 29.12.2012. Their names were included in online portal through which the salaries are disbursed.

4. Mr. Panpatte would submit that the respondent Nos.6 and 7 had raised objection to the appointment of the petitioners by filing Writ Petition No.9576/2016. By the order dated 05.12.2017 with the consent of the parties this Court directed the respondent No.2 - D.D.E. to reconsider the aspect of grant of approval on merits. Pursuant thereto the impugned decisions were taken.

5. Mr. Panpatte would submit that the impugned orders are cryptic and do not take into consideration the provisions of the Act and the Rules. There was no reason for the D.D.E. to take a contrary view than that was taken by the E.O. The grounds assigned by him are vague and omnibus. Some of the petitioners were appointed from the reserved category. No prior permission is contemplated under Section 5(1) of the Act. The petitioners have been in the employment since the year 2012. It would cause a serious prejudice to them if their appointments are set aside after 10 years. They were not responsible for any irregularity committed by the Management. Without there being any cogent and sufficient reason the D.D.E. has cancelled the approvals. The orders are illegal and may be set aside.

6. Mr. Panpatte also pointed out that in the meeting of the teachers association with the Education Minister of the State dated 26. 02.2019 it was resolved that instructions would be issued not to refuse approvals to the appointments of the teachers made after 2012-13 only on the ground that no objection certificates were not obtained before giving appointments.

7. Mr. Panpatte also relied upon following decisions :

a) Ku. Sunanda Dhondiram Wadje Vs. The State of Maharashtra; (WP No.5186/2004 Aurangabad Bench decided on 27.06.2005)

b) Vankatesh Jaiprakash Gangamwar Vs. The State of Maharashtra (WP No.11107/2014 dated 08.04.2015)

c) Sou. Revati Kusha Wagh and Anr. The State of Maharashtra and Anr.; (WP No.10580/2015 decided on 09.03.2017)

d) Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra thru Secretary and Ors.;

(WP No.8587/2016 decided on 10.07.2017)

e) Nitin Bhatusingh Thakur Vs. The State of Maharashtra and Ors.; (Writ Petition

f) Ravindra Gansing Sonawane Vs. State of Maharashtra and Ors.; 2019 (6) ALL MR 265

8. Learned advocate Mr. Brahme for the respondent Management would submit that though there is no tangible record to demonstrate if the Management had complied with the provisions of Section 5(1) of informing the E.O. its intention to undertake a recruitment process, the circumstances are eloquent enough to draw such an inference, else there was no reason for the E.O. for granting approvals and including petitioners name in the online portal for payment of salary. The whole purpose of Section 5(1) of the Act and Rule 9(8) of the Rules is to see to it that in spite of availability of teachers who have been rendered surplus and in spite of existence of backlog in respect of appointment of reserved category candidates the Management should not undertake any process of recruitment. If really there would have been any surplus candidate, the E.O. also could have refused to grant approval. If such is not the case, a legitimate inference is deducible about compliance with Section 5(1) and Rules 9(7) to 9(9). There was no error in undertaking the recruitment process and there was no reason for the D.D.E. to pass the impugned orders.

9. Mr. Brahme would further point out from the chart annexed to the affidavit-in-reply that whenever the surplus candidates were sent to the Management, they were duly absorbed. If at all the Education Officer was having the list of surplus candidates he could have forwarded it to the respondent Management but there is absolutely no material to show that any candidate was sent to it for being absorbed. The conduct of the Management is fair and is indicative of their bona fides whenever the request was made for absorption of surplus teachers.

10. Learned AGP would support the impugned orders. He would submit that the petitioners were appointed without following the procedure laid down under Section 5 and Rule 9(8). The whole purpose of providing for intimation to be given to the E.O. had lost. The advertisement was not given in a widely circulated newspaper. The petitioners were appointed by flouting all the provisions and there is no illegality in the orders.

11. We have carefully gone through the papers and considered the rival submissions.

12. The D.D.E. by the impugned order has cancelled the approvals on following grounds :

(i) Not obtaining no objection certificate from the E.O.; AND

(ii) Committing breach of the provision of Section 5(1) proviso and the Government Resolution dated 06.02.2012 by not undertaking the recruitment process as is contemplated in law.

13. Admittedly, the provisions of the Act and the Rules are applicable and would

govern the dispute and consequently it is imperative for us to reproduce the provisions :

" Sec. 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 list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy. "

Rule 9. Appointment of staff.

...

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

Total - 52 per cent.

(8) For the purpose of filling up the vacancies reserved under sub-rule (7) the Management shall advertise the vacancies in at least one newspaper having wide circulation in the region and also notify the vacancies to the Employment Exchange of the District and to the District Social Welfare Officer and to the associations or organisations of persons belonging to Backward Classes, by whatever names such associations or organisations are called, and which are recognised by Government for the purposes of this sub-rule requisitioning the names of qualified personnel, if any, registered with them. If it is not possible to fill in the reserved post from amongst candidates, if any, who have applied in response to the advertisement or whose names are recommended by the Employment Exchange or the District Social Welfare Officer or such associations or organisations as aforesaid or if no such names are recommended by the Employment Exchange or the District Social Welfare Officer or such associations or organisations as aforesaid] within a period of one month the Management may proceed to fill up the reserved post in accordance with the provisions of sub-rule (9).

(9) (a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year-to-year basis by a candidate not belonging to the Backward Classes.

(b) In the case of a non-teaching post, if a person from the particular category of Backward Classes is not available, the Management shall make efforts with regular intervals to fill up the post within the period of five years and the post shall not be filled up during that period by appointing any other person who does not belong to the respective category of Backward Class."

14. Taking the grounds in seriatim, it is quite apparent that the proviso to Sub-Section 1 of Section 5 and Rule 9(8) do not require express permission or no objection certificate from the E.O. before undertaking the recruitment process. However, it is also quite evident that before undertaking a recruitment for filling up the vacancies it is imperative for the Management to ascertain from the E.O. availability of a surplus person from the list maintained by him for being absorbed and to enable the E.O. to monitor if the recruitment sought to be undertaken would be by following the reservation. Therefore though the impugned order merely states about absence of any no objection certificate which may not be strictly a correct observation, one needs to examine the aspect from all the angles.

15. Admittedly, there is no tangible proof to demonstrate about the respondent Management having indulged into and exchanged some correspondence with the E.O. before undertaking the recruitment process. It is also a matter of record

that the respondent No.3 E.O. had granted approval to the petitioners' appointment without any demur. There is also no record to demonstrate that any surplus teacher was available at the relevant time. But then conversely, when the law requires the E.O. to be informed and to ascertain from him availability of surplus teacher as contemplated under the proviso to Sub-Section 1 of Section 5, it was highly imperative for the petitioners and the respondent Management to have produced on record a tangible proof regarding its compliance.

16. Similarly, though the advertisement indicates that some of the posts were reserved, the advertisement is as vague as it could be. In the 4th column reservations under a specific category have been indicated in common. Against eight posts for General/English/Science/Mathematics it has been mentioned in the column No.4 and 'S.T., S.B.C. and according to reservation'. Same is the case in respect of two posts for 12th Science and Arts subjects. Without going into the dispute as to if such a public notice was published in a widely circulated newspaper as is contemplated under Rule 9, the fact remains that there is also no tangible proof to demonstrate if the Management had ascertained from the E.O. and confirming from him the filling of the posts by following the reservation policy.

17. In this respect it is important to note that the State has placed before us alongwith its affidavit-in-reply a chart indicating as to how much was the backlog of reserved candidates when the recruitment process was undertaken. A bare look at this chart would demonstrate that though there was backlog of posts in respect of various reserved categories, it was neither specifically indicated in the advertisement precisely nor was the subsequent recruitment of the petitioners was in compliance with it. It is therefore quite evident that the whole purpose of providing in Rules 9(7) to 9(9) of ascertainment of compliance with the reservation policy has been given a complete go by.

18. The learned advocate Mr. Brahme made an attempt to demonstrate that the petitioner in Writ Petition No.2788/2019 was appointed as a Junior Clerk and there was no record to show that the post was reserved for a specific category, the fact remains that Section 5(1) as also Rule 9 are equally applicable to the teaching as well as the non-teaching staff of private schools. The respondent management had not undertaken the recruitment process in which the petitioners were appointed strictly in accordance with the Section 5(1) and Rule 9. Though the impugned orders are cryptic, the circumstance discussed herein above are sufficient to justify the ultimate conclusion drawn by the D.D.E. in the impugned orders.

19. Going by the approved roster placed on record (Exhibit R-2) along with the affidavit-in-reply in Writ Petition No.2878/2019 no post of teacher was reserved for O.B.C. category whereas petitioners in Writ Petition No.2801/2019, WP No. 2878/2019 and WP. No. 2941/2019 were appointed against O.B.C. category, whereas in spite of the roster showing vacancies belonging to S.C.-1, S.T.-9, N.T. (C)-1, N.T.(D)-1 and S.B.C.-1, the petitioners in Writ Petition No.2932/2019 and

2789/2019 who belonged to the open category were appointed. Whereas only the petitioner in Writ Petition No.2784/2019 who was belonging to S.T. category in respect of which there were 9 vacancies was appointed. This being the approved roster of the material time, it was expected of the respondent Management to have followed the procedure as laid down in clause Nos.7 and 8 of Rule 9 of the Rules (supra) strictly.

20. Clause 7 of Rule 9 prescribes for reservation to be followed. Clause 8 prescribes the steps to be taken by the Management while filling up the vacancies. Clause 9 then prescribes for the steps to be taken if it is not possible to fill in the post for which a vacancy is reserved for a particular category of backward classes. If the roster was approved, it was imperative for the Management to have undertaken process of recruitment by following such rules.

21. The advertisement even failed to precisely indicate how many were the vacancies for a particular category of reservation. There is absolutely dearth of material to objectively demonstrate that any process as is contemplated under Section 5 and Rule 9 was undertaken while appointing the petitioners.

22. True it is that the petitioner in Writ Petition No.2788/2019 was appointed as a junior clerk and no similar roster is produced on the record but conspicuously she is appointed from O.B.C. category and the advertisement did not indicate that the post was reserved for an O.B.C. category and though the impugned decisions of the D.D.E. are cryptic, the aforementioned circumstances are sufficient to reach a conclusion regarding rampant illegality committed by the Management while appointing the petitioners. Though, the observation and conclusion of the D.D.E. on the ground of absence of no objection certificate is not sustainable in law, the conclusion drawn by him is clearly justified in the facts and circumstances discussed herein above.

23. Merely because the E.O. at some earlier point of time had granted approval does not necessarily mean that the respondent D.D.E. could not have reconsidered the legality of the approvals particularly when this Court had directed him to undertake that exercise in view of the decision in the Writ Petition No.9576/2016 (supra).

24. Turning to the submission of the learned advocate Mr. Panpatte in respect of the minutes/decision taken in a joint meeting of the Association of the Teachers and the Education Minister on 26.02.2019, according to the decision it was merely resolved that instructions would be issued not to refuse approvals to the appointment of the teachers appointed after

20. 12.2013 on the ground of absence of no objection certificate. Irrespective of the fact that these are merely the minutes and there is no material to demonstrate that the minutes were actually put into force by issuing any government resolution subsequently, even otherwise, as has been observed herein above, Section 5 of the Act and Rule 9 of the Rules do not expressly contemplate any such no objection to be obtained from the E.O. before

undertaking a recruitment process and even we do not approve that particular ground assigned by the D.D.E. in the impugned orders. Besides, all the petitioners were appointed by the cutoff date mentioned in this decision and would not apply to them.

25. The decisions cited by Mr. Panpatte are clearly distinguishable on facts and none is applicable to the facts situation of the matter in hand.

i. In the matter of Vankatesh Jaiprakash Gangamwar (*supra*) it was concluded that the recruitment was undertaken and the petitioner therein was appointed by following the requisite procedure as contemplated and discussed herein above.

ii. In the matter of Nitin Bhatusingh Thakur (*supra*) it was found that none of the grounds furnished in the impugned order refusing to grant approval was sustainable on facts.

iii. In the matter of Sou. Revati Kusha Wagh (*supra*) the refusal to grant approval on the ground that there was ban on the recruitment in view of the Government Resolution dated 02.05.2012 was held to be not sustainable.

iv. In the matter of Smt. Munoli Rajashri Karabasappa (*supra*) the appointments of the teachers were held to be illegal in view of the ban pursuant to the Government Resolution dated 02.05.2012 and on the ground of availability of surplus teacher. It was held that the grounds were not available for the recruitment processes which had commenced prior to 02.05.2012.

v. In the matter of Ku. Sunanda Dhondiram Wadje (*supra*), again, the order passed by the E.O. was prompted by a communication originating from the D.D.E. and the former had not undertaken any scrutiny to examine if there were excess teachers available to be absorbed before the petitioner therein was appointed.

26. The Writ Petitions are dismissed. The Rule is discharged.