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WP1959.2024.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1959 OF 2024

Gayatri Pandurang Bhamre
Age: 28 years, Occ. Service.
R/o at Chinchkhede,
Tal. & Dist. Dhule.

... Petitioner.

Versus

1. Gram Vikas Mandal,
Regd. Through Secretary,
Naval Nagar, Tal. Dist. Dhule.
2. Shiv Chatrapati Shivaji School,
Dhondibaar, through its Principal,
Tal. Sinnar, Dist. Nashik-422103.
3. Education Officer (Secondary),
Nashik, Zilla Parishad, Nashik.
4. State of Maharashtra
to be served through the
Government Pleader,
Bombay High Court.

... Respondents

...

Mr. Anilkumar Patil a/w. Mr. Sachin Bhavar, a/w. Ms. Zeel Jain a/w. Mr.
Digvijay A. Patil, for the Petitioner.

Mr. Konika Tile Jadhav, for Respondent Nos. 1 and 2.

Mr. V.G. Badgujar, AGP for the State / Respondent Nos. 3 and 4.

CORAM : RAVINDRA V. GHUGE, &
ASHWIN D. BHOBE, JJ.

RESERVED ON : 6th FEBRUARY, 2025
PRONOUNCED ON : 26th FEBRUARY, 2025

JUDGMENT (PER ASHWIN D. BHOBE,J) :-

1. Rule. By consent of the counsel, Rule is made returnable forthwith.

2. By the present Petition, the Petitioner has sought the following substantial reliefs :

“B. That this Hon’ble Court be pleased to issue Writ of Certiorari or any other Writ in the like nature of Writ of Certificate may be pleased to quash and set aside the Order dt. 07.11.2022 passed by Respondent no. 2 Education Officer (Secondary), Nashik herein.

C. That this Hon’ble court be pleased to issue Writ of Mandamus or any order, direction in the like nature of Writ Mandamus or any other appropriate Writ and may be pleased to direct the Respondent no. 1 Management to submit the proposal of approval afresh and also direct the Respondent No. 2 Education Officer to reconsider and grant the proposal for approval of the service of the Petitioner.”

3. **FACTUAL MATRIX.**

(a) Respondent No. 1 is the Educational Institution which manages and runs the Respondent No. 2 School.

(b) Petitioner has completed her graduation in Science & Zoology and B.Ed. in Science.

(c) Respondent No. 1 vide advertisement, published in the newspaper “Rajrang Times”, dated 04.03.2021 invited applications for the post (2 Nos.) of Assistant Teacher. Qualifications required for the said post were B.A. B.Ed. English, Hindi, Marathi B.Sc. B.Ed., Maths Science. Candidates were required to hold TET passing Certificate. Category notified was SC/ST/OBC. Interviews were scheduled on 15.03.2021 at 10 a.m.

(d) Petitioner applied for the said post in OBC Category. Petitioner was selected for the post of Assistant Teacher, for subject Science.

(e) By order dated 31.03.2021, Petitioner was appointed as an Assistant Teacher for two year commencing from 01.04.2021 upto 31.03.2023.

(f) On 20.10.2022, Respondent No. 1 submitted its proposal to the Respondent No. 3, seeking approval of Petitioner's appointment to the post of Assistant Teacher.

(g) By order dated 07.11.2022 Respondent No. 3 rejected the proposal dated 20.10.2022("impugned order"). Proposal dated 20.10.2022 is rejected on the ground that the Petitioner's appointment is not made through the Pavitra Portal.

4. Respondent Nos. 1 and 2 have filed their reply dated 18.12.2024 supporting the case of the Petitioner. Said Respondents contend that the appointment of the Petitioner was made after following the due process and in compliance with Section 5(1) of MEPS Act, 1977 and Rules 1981. It is their contentions that Respondent No. 3 erroneously rejected the proposal dated 20.10.2022.

Submissions:-

5. Mr. Anil Kumar Patil, Advocate for the Petitioner submits that the

appointment of the Petitioner as an Assistant Teacher was made pursuant to the post being notified by advertisement dated 04.03.2021. He submits that Petitioner is from OBC category and she satisfies the qualifications required for the said post. According to him, the appointment of the Petitioner is made after following the requirements under MEPS Act, 1977 and Rules, 1981. He therefore, prays that the Petition be allowed.

6. Mr. Konika Tile Jadhav, Advocate for the Respondent Nos. 1 and 2 supports the case of the Petitioner and reiterates case of the Respondent Nos. 1 and 2 as set up in the affidavit in reply dated 18.12.2024.

7. Mr. Badgujar, learned AGP for the Respondent Nos. 3 and 4 submits that upon the introduction of the Pavitra Portal Shikshan Bharati Scheme, introduced by G.R. dated. 23.06.2017, all appointments are required to be made by following procedure under the scheme. Appointment of the Petitioner is not made through Pavitra Portal as such the Respondent No. 3 was right in rejecting the proposal dated 21.10.2022. Mr. Badgujar submits that the nature and/or circulation of the said newspaper "Rajrang Times" is not known. He supports the impugned order and prays for dismissal of the Petition.

8. From the rival contentions, the question that falls for consideration is whether the impugned order is illegal ?

ANALYSIS

9. Facts which are not in dispute are as follows :

(a) Appointment of the Petitioner is vide order dated 31st March, 2021.

(b) Advertisement issued by the Respondent No. 1 was published in the newspaper "Rajrang Times" dated 04.03.2021. Among the other qualifications referred to in the said advertisement, one of the condition was that the candidate must have passed TET Examination. The advertisement is dated 04.03.2021 whereas the interview was scheduled on 15.03.2021.

10 Pavitra Portal was introduced by the School Education and Sports Department, through Government Resolution dated 23.06.2017, with the avowed object of element of transparency in recruitment of teachers in private schools. The G.R. dated 23.06.2017 was subject matter of challenge in Writ Petition No. 5059 of 2017. By Judgment dated 21.11.2018 this Court though upheld the eligibility criteria prescribed, however held the procedure of appointment described in Government Resolution dated 23.06.2017 was arbitrary. In view of the Judgment dated 21.11.2018, the State Government came up with Government Resolution dated 07.02.2019 prescribing revised or modified procedure for selection and appointment in schools/junior colleges through Pavitra Portal.

11. Appointment of the Petitioner is not through the Pavitra Portal Scheme. Once it is established that the appointment of the Petitioner is not in terms of Pavitra Portal, no indulgence would be warranted in favour of the Petitioner and the petition was liable to be dismissed on this count alone.

12. In addition, to the above we find following flaws in the appointment of the Petitioner :

(a) Petitioner has not produced the entire newspaper or the page containing the advertisement published in the newspaper dated 4.04.2021. What has been produced is the contents of the advertisement. Memo of Petition does not contain any averment with regards to the name of the newspaper or the nature of circulation of the said newspaper. During the course of argument, Mr. Patil on instructions states that the advertisement was published in the newspaper known as "Rajrang Times". Mr. Badgujar is right in submitting that the said newspaper is unknown and at any rate does not appear to be a widely circulated newspaper. No material has been placed before us by the Petitioner with regard to the nature of circulation of the said newspaper. We therefore, find that publication of the advertisement in the newspaper "Rajrang Times" dated 04.03.2021 is not in compliance with Rule 9(2-A) of the MEPS Rules 1981, which mandates that the advertisement should be published in one local newspaper having wide circulation in the region.

(b) Rule 9(2-B) of the MEPS Rules, 1981 provides that the advertisement

shall be kept open for at least 15 days before filling of the concerned post. In the instant case, the advertisement is dated 04.03.2021 and the interview scheduled was on 15.03.2021.

(c) One of the eligibility criteria for the post of Assistant Teacher as advertised vide Advertisement dated 04.03.2021 was that the candidate should possess TET-passed certificate. The Petition neither contains any averment nor any document indicating, of the Petitioner having passed TET-Examination as on 15.03.2021.

13. Above facts would indicate non-compliance of the required procedure by the Respondent No. 1 prior to notifying the post of Assistant Teacher. There is neither any justification nor any reason offered or urged before us, for not adopting the selection process in terms of Pavitra Portal. Advertisement dated 04.03.2021 is not in compliance with the requirement of Rule 9(2-A) of the MEPS Rules, 1981. This Court in the case of *Pooja Yogesh Singh & Anr. v/s. The State of Maharashtra* (W.P. No. 16128 of 2024) has considered the need of complying with Rule 9(2-A) of the MEPS Rules, 1981 and in the said case having found the advertisement being defective refused to grant approval to the appointment of a teacher in the said case.

14. Even otherwise, the selection of the Petitioner is contrary to the advertisement, assuming for the sake of arguments that the advertisement can be considered. Petitioner does not possess the TET-Certificate as such, the

Respondent No. 1 could not have considered the candidature of the Petitioner.

15. The selection of the Petitioner for the reason recorded herein above is illegal.

16. We find no error in the impugned order. The Petition is without merit and as such is dismissed.

17. Rule discharged. There shall be no order as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)