

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9411 OF 2013

SUMIT SUNIL MULE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. Pratap G. Rodge
A. G. P. for respondent Nos. 1 and 2 : Mr. D. B. Bhange
Advocate for respondent No. 3 : Mr. P. R. Tandale
Advocate for respondent No. 4 : Mr. S. M. Vibhute
Advocate for respondent No. 6 : Mr. S. G. Rudrawar

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 4th AUGUST, 2015

P.C. :-

1. Mr. Rodge, the learned counsel for the petitioner submits that the petitioner was appointed in June, 2011. His services were also approved for the probation period. The learned counsel submits that the petitioner is continued in respondent School and the proposal is also submitted seeking approval to his continuation as Trained Primary Graduate Teacher. However, no orders are passed on the said proposal and the proposal of respondent No. 6 is approved. Respondent No. 6 has got qualification of D.Ed., as such, cannot be considered in place of the petitioner who has B.Ed. Qualification. As per the staffing pattern, four posts are sanctioned. Three posts are meant for D.Ed. and one is for B.Ed. category. The petitioner comes within the ambit of

25%. The learned counsel submits that the respondents be directed to grant approval to the appointment of the petitioner.

2. Mr. Vibhute, the learned counsel appearing for the Management, submits that respondent No. 6 is already terminated from service and the proposal of the petitioner has been forwarded considering the fact that the petitioner can be accommodated in 25%.

3. Mr. Tandale, the learned counsel submits that the post of Trained Graduate Primary Teacher is on non-grant basis. The appointment of the petitioner and respondent No. 6 is on one and the same day and respondent No. 6 is from reserved category. Considering the roster, the approval was granted to respondent No. 6.

4. Mr. Rudrawar, the learned counsel for respondent No. 6 submits that respondent No. 6 has already filed an appeal before the School Tribunal against the order of termination. The approval is rightly granted by the Education Officer considering the staffing pattern.

5. We have also heard the learned A.G.P. who submits that initially, approval granted to the appointment of the petitioner for the period of two years is incorrect and contrary to the Government

Resolution dated 11.11.2011.

6. It appears that no orders are passed on the proposal submitted by the Management seeking approval to the appointment of the petitioner as Trained Primary Graduate Teacher. The letter dated 04.03.2013 (Page 13) shows that one post for Trained Primary Graduate Teacher is available from June, 2010 initially on grant-in-aid of 20% and from June 2012 on grant-in-aid of 60%. The same appears as per letter issue by the Education Officer (Primary)

7. Be that as it may, it is for the Education Officer to consider the said aspect. Today, the respondent No. 6 is already terminated who has also filed an appeal before the School Tribunal.

8. In a school having 1 to 7th standard, 25% posts can be filled in by persons possessing Trained Graduate Qualification i.e. B.Ed. The Education Officer shall consider the said aspect. The petitioner, when he was appointed, was appointed in D.Ed. Category, however, subsequently, in the year 2012, has acquired B.Ed. Qualification. The said aspect be considered by the Education Officer. The Education Officer shall consider the proposal of the petitioner submitted by the Head Master seeking approval to his appointment (page 23), on its own merits and in accordance with law and policy. The petitioner and

the Management may represent themselves before the Education Officer. The same shall be decided expeditiously preferably within a period of six (6) months.

9. The writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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