

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1974 OF 2016

Sambhaji Ashokrao Tate

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. V.S. Panpatte, Advocate h/f Mr. Shaikh Layak S., Advocate for petitioner.

Mr. P.S. Patil, A.G.P. for Respondent Nos.1 and 2.

Mr. N.S. Kadam, Advocate for Respondent No.3.

Mr. S.R. Choukidar, Advocate for Respondent Nos.4 and 5.

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**CORAM : R.M. BORDE AND
K.K. SONAWANE, JJ.**

DATED : 18th AUGUST, 2016

ORAL ORDER :

. The petitioner is objecting the order dated 18.11.2015 passed by the Education Officer thereby cancelling the approval accorded to the appointment of the petitioner. The order has been issued by the Education Officer after extending opportunity of hearing to the petitioner in pursuance to the directions issued by this Court in Writ Petition No. 10978 of 2014.

2. The petitioner claims that in pursuance to the advertisement issued by the Management for appointment of teachers, he tendered an

application, and after observing the due procedure in respect of making appointment to the post of Shikshan Sevak, he has been appointed for a period of three years in view of the order of management dated 13.12.2013. It is not a matter of dispute that the petitioner does not belong to Scheduled Caste or any reserved category however has been offered employment as against the post reserved for the Scheduled Caste category. It is the contention of the petitioner that though the Education Officer accorded approval to his appointment, initially it was not open for the concerned officer to revoke the approval.

3. Our attention is invited to the order of appointment issued by the education institute. Though petitioner is appointed as against a reserved vacancy, his services are approved by Education Officer as Open Category candidate. The advertisement issued by management specifically prescribed vacancy for Scheduled Caste Category candidate and petitioner is appointed against such reserved vacancy. It was not open for the management to fill up the vacancy from the candidate belonging to Open Category, nor it was permissible for the Education Officer to accord the approval to the appointment considering the petitioner as an Open Category candidate. It is surprising as to how the Education Officer (Primary), Zilla Parishad, Nanded initially accorded the

approval by order dated 23rd December, 2013 to the appointment of the petitioner as an open category candidate. Looking to the prescription under the advertisement that the post is earmarked for Scheduled Caste category, it was not permissible for the Education Officer to approve appointment as Open Category candidate. It would be open for the Zilla Parishad to investigate as regards action of Education Officer in according approval at relevant time by deviating from the establishment procedure. It is not a matter of dispute that there is a back-log of the Scheduled Caste category in the Institution. The petitioner on account of his appointment by passing the prescription under the advertisement cannot claim entitlement to the post. The Institution cannot be permitted to frustrate the policy of reservation by deviating from procedure of appointment. The decision taken by the Education Officer is perfectly within framework of law.

4. Our attention is invited to the Judgment delivered by the Division Bench of this Court in Writ Petition No. 11107 of 2014. On perusal of the said judgment, it is evident that this Court has adopted a lenient view in a different set of circumstances. Even otherwise, no law has been laid down by the Division Bench in respect of observance of policy of reservation. Similarly, reliance is placed on an order passed by

the Division Bench of this Court in Writ Petition No. 5186 of 2004, decided on 27th June, 2005. The facts giving rise to the judgment are totally different and as such the view adopted by Division Bench of this Court in the aforesaid matters cannot be made applicable to the instant case.

5. Writ petition is devoid of substance and hence stands rejected.

(K.K. SONAWANE, J.)

(R.M. BORDE, J.)

SSD