

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

WRIT PETITION NO.7676 OF 2015

1. East Khandesh Education
Society, Jalgaon,
Through its President
Arvind Bankatlal Lathi,
Age-64 Years, Occu-Business,
R/o. Jalha Peth, Jalgaon,
Dist. Jalgaon.
2. Raosaheb Rupchand Vidyalaya,
Jalgaon, Through its Head Master
Dagadu Sudam Sarode,
Age- 51 years, Occu-Service,
R/o. Jilha Peth, Jalgaon. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary)
Zilla Parishad, Jalgaon. **RESPONDENTS**

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Ms.Seema T. Pawar, Advocate h/f. Mr.
A.G.Talhar, Advocate for the petitioners
Mr.P.N.Kutti, AGP for Respondent nos.1 and 2.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 05.08.2016
Pronounced on : 11.08.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.
2. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
3. This Petition takes exception to the impugned order dated 08.12.2011 passed by respondent no.2, and further seeks direction against respondent no.2 to grant approval to the post of Laboratory Assistant as per the proposals submitted by the petitioner – institution.
4. The learned counsel appearing for the petitioners tendered across the Bar copies of the additional documents. The same

are taken on record. She submits that the petitioner – society, after following due procedure of law, issued an advertisement in the newspaper and after adherence to the relevant procedure, appointed one Mr. Dilip Raghunath Patil to the vacant and sanctioned post of Laboratory Assistant in view of the fact that one of the employees of the school namely, Mr. Ashok Rajaram Kulkarni retired on attaining the age of superannuation. The petitioner society submitted a proposal for approval to the Education Officer along with the relevant documents. However, the same has been rejected by the Education Officer on the ground that as per the Government Resolution dated 25.11.2005, the post is not sanctioned and moreover as per the Government Resolution dated 10.06.2010, there is a ban on recruitment in the school.

5. It is further submitted that the petitioner filed various representations

dated 15.04.2013, 07.12.2013 and 10.02.2014 and it was brought to the notice of the authorities that there is no legal impediment for granting approval to the appointment of Mr.Dilip Raghunath Patil to the post of Laboratory Assistant. It is submitted that the respondent Education Officer did not forward the name of any surplus employees for absorption in the school run by the petitioner society, and therefore, raising the ground that there are surplus employees to be absorbed and there is general ban on recruitment cannot be countenanced. The learned counsel invites our attention to the various letters written to the Deputy Director of Education by the petitioner no.2 and submits that the Petition deserves to be allowed.

6. On the other hand, the learned AGP appearing for respondent – State relying upon the contents of the impugned order submits

that the appointment of the said Mr.Dilip Raghunath Patil is not on sanctioned post, and therefore, the Education Officer has rightly observed the approval cannot be granted to the appointment of Mr. Dilip Raghunath Patil.

7. We have given careful consideration to the submissions of the learned Counsel appearing for the parties. With their able assistance, perused the pleadings in the petition, annexures thereto and the compilation of the additional documents tendered across the Bar by the advocate appearing for the petitioners. It appears that petitioner no.2 wrote a letter to the Education Officer (Secondary), Zilla Parishad, Jalgaon, in the year 2010-11, requesting therein to allow them to advertise the post i.e. the post of Laboratory Assistant. It further appears that the Resolution was passed, appointing the said

Mr.Dilip Patil in pursuance of the selection process carried out according to the prescribed procedure. Therefore, so far as procedural part is concerned, *prima facie*, there appears to be compliance of the mandate of the Maharashtra Employees of Private Schools (Conditions of Service) Act and the Rules and the relevant provisions.

8. The Education Officer assigned cryptic reasons that there was a ban for recruitment and the post is not sanctioned. The Education Officer ought to have considered the contentions of the petitioners in detail. It appears that the petitioners approached by way of filing representations to the Education Officer and also to the Deputy Director of Education, requesting therein for grant of approval. We cannot approve the cryptic reasons given by the Education Officer without adverting to the record maintained by the petitioner society.

9. In that view of the matter, in our opinion, the ends of justice would meet in case the impugned order is quashed and set aside and the Education Officer (Secondary), Zilla Parishad, Jalgaon is directed to reconsider the entire issue after hearing and allowing the petitioners to place on record the documents in support of their case. Accordingly, the impugned order dated 08.12.2011 is quashed and set aside, the proposal submitted by the petitioners for approval to the services of Mr. Dilip Raghunath Patil is restored to its original file. We direct respondent no.2 to take decision afresh after hearing and allowing the petitioners to place on record the documents in support of their contentions. The petitioners shall appear before the Education Officer on 22.08.2016 at 11.00 a.m. The Education Officer may hear the

petitioners and also allow them to place on record the copies of documents and also after perusing the original record maintained by the petitioner society, may take decision on or before 15.09.2016. In case it is not possible for the Education Officer for unavoidable reasons to hear the petitioners on 22.08.2016, he may fix another date during the week commencing from 22.08.2016, however, take decision afresh as expeditiously as possible, however, on or before 15.09.2016 and communicate the said decision to the petitioners.

10. We have not expressed any opinion on merits of the contentions raised by the petitioners and it is open for the Education Officer to look into the original record and documents placed on record and then pass appropriate orders.

11. The rule is made absolute partly.
The Writ Petition is disposed of accordingly.
No costs.

Sd/-

[SANGITRAO S.PATIL]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE