

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

**WRIT PETITION NO. 4232 OF 2016**

Anant Kamlakar Joshi and others                      ..    Petitioners

**Versus**

The State of Maharashtra and others                      ..    Respondents

Shri V. S. Panpatte, Advocate for Petitioners.

Shri S. Y. Mahajan, A.G.P. for Respondent Nos. 1 and 2.

Shri P. D. Suryawanshi, Advocate for Respondent Nos. 3 and 4.

Shri Milind M. Patil (Beedkar), Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND  
K. L. WADANE, JJ.**

**DATE : 17TH OCTOBER, 2016.**

**PER COURT :**

.        Mr. Panpatte, the learned counsel for the petitioner submits that, pursuant to advertisement issued by the respondent No. 5 on 07.07.2012, the petitioner Nos. 1 and 2 had applied. The petitioner Nos. 1 and 2 were selected as Shikshan Sevak after following due procedure of law and were given appointment orders on 23.07.2012. The petitioner No. 3 had applied for the post of Shikshan Sevak pursuant to the advertisement dated 18.06.2013 and was selected after following due procedure of law and was issued appointment order on 23.07.2013. The learned counsel submits that, the Education

Officer granted approval to the appointments of petitioner Nos. 1, 2 and 3 as Shikshan Sevak by order dated 25.06.2014. The learned counsel submits that, since the date of appointment, the petitioners are continuously discharging their duties. On completion of period of three years, the respondent No. 5 forwarded proposal seeking permanent approval as Assistant Teacher. However, no decision is taken upon said proposal, nor any salary is paid to petitioners since initial date of their appointments. The learned counsel submits that, on completion of probation period or period as Shikshan Sevak, the petitioners are deemed confirmed employees, even as per Government Resolution dated 14<sup>th</sup> October, 2010.

2. Mr. Patil, the learned counsel for the respondent No. 5 submits that, the posts had become vacant with the respondent No. 5, as such the management sought permission from the Education Officer for filling in the post on 07th April, 2012. Thereafter reminder was given on 21st May, 2012, but no reply was received and thereafter advertisement was published on 07th July, 2012. The learned counsel submits that, even in the year 2013 on 05th May, 2013, the respondent No. 5 had given application to the Education Officer seeking permission to fill in the post. No reply was received and thereafter advertisement was issued on 07th July, 2013. It is not a case that, the respondent No. 5 did not intimate the Education Officer or that it

did not sought permission. But the respondent No. 3 did not respond to the applications of the respondent No. 5, nor had directed to absorb surplus candidates on the said posts on which the petitioners were appointed.

3. Mr. Suryawanshi, the learned counsel for respondent Nos. 3 and 4 submits that, vide Government Resolution dated 02nd May, 2012, the Government had issued ban on recruitment with the sole object to absorb the surplus teachers. The then Education Officer hand in glove with the institution has erroneously granted approval to the appointment of petitioners and enquiry is sought to be initiated against the said Education Officer. The learned counsel submits that, as the initial appointments of petitioners itself were illegal and contrary to the policy laid down by the State in its G. R. dated 02.05.2012, the petitioners cannot be said to be properly selected. The approval granted by the then Education Officer being illegal, the same does not have any sanctity in law. In view of that, subsequent proposals also received as Assistant Teachers cannot be granted. No illegality is committed by the respondent Nos. 3 and 4. The learned counsel relies on the judgment of the Division Bench of this Court at Nagpur in Writ Petition No. 6606 of 2015 with other connected writ petitions disposed of by judgment dated 17.06.2016.

4. We have heard the learned Assistant Government Pleader also.

5. It is a fact that, vide Government Resolution dated 02nd May, 2012 restrictions were placed upon fresh recruitment by the institutions.

6. In the present case, it would appear that, for the first time management sought permission to fill in two posts on which petitioner Nos. 1 and 2 are subsequently appointed on 07th April, 2012 i. e. prior to the date of Government Resolution dated 02nd May, 2012. The respondent No. 5/institution had also issued reminder to the Education Officer. The Education Officer did not reply to the said communication, nor directed the respondent No. 5/institution to absorb any surplus candidate. Thereafter issuing advertisement and following selection process, the petitioner Nos. 1 and 2 are appointed on 23.07.2012. The same is the case in respect of the appointment of the petitioner No. 3, who has been appointed on 23.07.2013. In that case also two months prior to the advertisement being issued, management had applied to the Education Officer seeking his permission to fill in the post. In that case also the Education Officer did not reply, nor directed any surplus candidate to be appointed on the post on which subsequently the petitioner No. 3 is appointed. These petitioners are granted approvals to their appointments by the Education Officer. These petitioners have completed period of their

Shikshan Sevak and on completion of period of Shikshan Sevak have become entitled to be considered as Assistant Teachers.

7. The petitioners are not at fault. They have responded to the advertisement issued and after following due process of law are selected and appointed. In case there is any collusion between institution and Education Officer as contended by the Education Department, the petitioners cannot be made to suffer for the same.

8. We could have taken into consideration the case of respondent Nos. 3 and 4, had the respondent Nos. 3 and 4 approached this Court with a case that, they had directed the respondent No. 5 management to absorb surplus teachers on the post to which these petitioners were appointed and the respondent No. 5 refused to absorb them. In that case, certainly, the respondent No. 5 management would not have any *locus standi*, but that is not the case. It is nowhere the case of respondent Nos. 3 and 4 that, at any point of time they had asked the respondent No. 5 to absorb any surplus teacher in these four years on the post on which these petitioners are appointed. The respondent No. 5 could not have kept the said posts vacant for a long slumber of period as in that case the students would have suffered. The respondent Nos. 3 and 4 have not taken steps, directing the respondent No. 5 to appoint available surplus candidates. In absence thereof, they cannot blame, the

petitioners and the respondent No. 5.

9. Even approval is granted to the appointment of the petitioners and they have completed period of three years as Shikshan Sevak. Considering aforesaid conspectus of the matter, we are inclined to exercise our discretion. In case the then Education Officer had committed any flaw or is guilty of any misdeeds, then certainly, the respondent Nos. 1 and 2 are entitled to take proceedings as contended in the affidavit in reply.

10. In the light of the above, we pass following order.

11. The respondent No. 3 shall consider the proposal forwarded to it seeking approval to the appointments of petitioners as Assistant Teachers on its own merits, in accordance with law and shall not reject it on the ground that at the time when petitioners were appointed there was ban on recruitment. The same be done expeditiously and preferably within a period of three (03) months from today. The respondents, thereafter in tune with the order passed on proposal for approval shall process the salary bills of petitioners accordingly. The writ petition is disposed of with aforesaid observations and directions. No costs.

**[ K. L. WADANE, J. ]**

**[ S. V. GANGAPURWALA, J. ]**