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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.699/2013

Aryan Shikshan Prasarak Mandal.
...Petitioner..

Versus

The State of Maharashtra & others.
...Respondents...

.....

Shri S.R. Chowkidar, Advocate for petitioner.
Smt.S.S. Raut, AGP for respondent nos.1 & 2.
Smt.Yogita Kshirsagar, Advocate for respondent no.3.
Shri M.D. Narwadkar, Advocate for respondent nos.4 to 7.

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

DATE: 15.12.2016

ORDER :

1] Mr.Chowkidar, learned counsel for the petitioner submits that the petitioner appointed the respondent nos.4 to 7 herein in the year 2010 as the persons who were working on the said posts had retired. The appointment was made after following the due procedure of law, by issuing advertisement and following selection

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process. The learned counsel submits that the proposal seeking approval to their appointment is forwarded in the year 2010, however, no decision has been taken upon it. According to the learned counsel, in 2006 and 2007, two surplus teachers, who were directed to be absorbed, were absorbed by the petitioner and those were the teachers of the petitioner - institution only. As they had retired, subsequent appointments are made after following procedure as per law.

2] Smt.Kshirsagar, learned counsel for the Education Officer submits that large number of surplus teachers are required to be absorbed. The petitioner could not have appointed the respondent nos.4 to 7 without concurrence of the Education Officer and without absorbing the surplus teachers. According to the learned counsel, total teaching staff sanctioned on 13.12.2012 is seven i.e. one Head Master and six Primary Teachers. According to the learned counsel, the petitioner has made a false statement that the surplus teachers are allowed to join by the petitioner.

3] The petitioner claims to have appointed the respondent nos.4 to 7 in the year 2010 upon retirement

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of some teachers and the posts becoming available. In the year 2010, it does not appear that there was ban on recruitment. The same was introduced in the year 2012.

4] There is a dispute about absorption of two teachers in the year 2006-07. The petitioner contends that those persons were from the petitioner - institution and were absorbed and subsequently have retired. It does not appear that the said persons have made any grievance and these persons are appointed subsequently in the year 2010.

5] It is undertaken by the petitioner that if the posts increase and/or further become available, then the surplus candidates who would be referred by the Education Officer would be absorbed on the said posts.

6] Considering the above, the respondent no.3 - Education Officer shall decide the proposal submitted by the petitioner seeking approval to the appointment of the respondent nos.4 to 7 on its own merits in accordance with law, rules and policy, however, shall not reject it only on the ground that at the relevant time, surplus candidates were not absorbed. The same shall be done expeditiously and preferably within a period of six

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months. Writ petition is accordingly disposed of. No costs. In view of disposal of writ petition, civil application also stands disposed of.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)