

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO. 6615 OF 2015
WITH WP/4957/2015 WITH WP/6853/2015**

MILIND VILAS PATIL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Ms. Mahajan Surekha P. & Mr. S.S. Kate

AGP for Respondent/State : Mr. A.V. Deshmukh

Advocate for Respondent nos. 4 and 5 in WP No.6615/2015 : Mr. Patil
Nayana D.

Advocate for Respondent nos. 3 and 4 in WP No.4957/2015 : Mr. Patil
Nayana D.

Advocate for the Respondent Nos. 3 and 4 in WP 6853/2015 : Mr. S.P.
Rathod

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: February 29, 2016

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PER COURT :-

We have heard the learned counsel appearing
for the parties at length.

2. We have called upon the learned counsel
appearing for the parties to advance the arguments on
merits as well. However, in absence of adjudication by the
Education Officer on vital aspects, including the Education
Officer did not consider the position of vacancies, as was
available at the time of appointment of the petitioners, and

even after remand of the case for fresh consideration to the Education Officer, instead of considering the matter on merits of the contentions raised by the parties, he proceeded to endorse earlier decision by assigning same reasons while rejecting the proposal for approval of the petitioners' services submitted by the Respondent - Management. The learned counsel appearing for the petitioners is right in contending that, the Education Officer relying upon the Government Resolution bearing No. SSN 2603/(41/03)Mashi-2 dated 25th November, 2005 issued by the School Education and Sports Department, Mantralaya, Mumbai has rejected the proposals and communicated such rejection in its impugned communications, addressed to the Headmaster of concerned schools. When the matter was remitted back to the Education Officer for fresh consideration, the Education Officer again reiterated the same reasons, while rejecting the proposals for approval of the services of the petitioners.

3. Upon considering the material placed on record, the Education Officer could not have placed reliance on the Government Resolution dated 25th November, 2005 issued

by the School Education and Sports Department, Government of Maharashtra, since that Government Resolution has never been acted upon by the Government, as rightly pointed out by the learned counsel appearing for the petitioners, from the contents of the Government Resolution dated 23rd October, 2013, issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai and in particular clause (2) thereof. There is considerable force in the argument of the learned counsel appearing for the petitioners that, the aforementioned Government Resolution dated 25th November, 2005, has not been acted upon and even implementation of the Government Resolution dated 23rd October, 2013, has been stayed by the another Government Resolution dated 12th February, 2015 issued by the same Department. Therefore, it was incumbent upon the Education Officer to consider the proposals for the approval of the petitioners' services submitted by the Respondent - Management on its own merits, keeping in view the availability of vacancies prior to the appointment of the petitioners and also other aspects, including adherence to the procedure prescribed under the Maharashtra Employees

of Private Schools (Conditions of Services) Regulation Act and Rules. However, the Education Officer failed in its duties inspite of the specific directions given by this Court.

4. We have considered the possibility of disposing of these Petitions on merits, even including the factual assertions made by the respective parties, however, we find it difficult to dispose of these Petitions by directly entering in to controversy raised on factual aspects, in absence of considering such controversy by the Education Officer, and same is set at rest by adjudicating the issue raised on merits by the said authority. In that view of the matter, we have left with no option but to relegate the parties before the Respondent No.2 - Education Officer, to take decision on the proposals of the petitioners for approval submitted by the Management, on its own merits by hearing the Management. In the result, we pass the following order :-

ORDER

(i) The impugned communications stand quashed and set aside.

(ii) The representative of the Managements, either

through Headmasters or Secretaries, to appear before the Respondent No.2 on 7th March, 2015 at 11 a.m.

(iii) In case, on that day, it is possible for the Education Officer to hear the representative, verify the record and take decision on merits, Respondent No.2 can do so or may fix the future date of his convenience for taking decision afresh. However, we make it clear that, since the petitioners are rendering services without approval from the year 2009, it is desirable that, the Respondent No.2 shall take decision, as expeditiously as possible, and preferably, within 10 weeks from today, and communicate the said decision to Respondent Nos. 3 and 4 and to the petitioners.

5. The Petitions are disposed of in above terms.

6. The parties to act upon an authenticated copy of this order.

(**P.R. BORA, J.)**

(**S.S. SHINDE, J.)**