

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

26 WRIT PETITION NO. 7239 OF 2015
ASHOK SHIVRAM KALE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS
WITH

WRIT PETITION NO. 7240 OF 2015

DEEPAK SHRIMANTRAO AGHAV

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS
WITH

WRIT PETITION NO. 7245 OF 2015

DEEPAK SHRIMANTRAO AGHAV

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Mundhe Subhash V.
AGP for Respondents State: Mrs. M. A. Dashpande

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

DATE : 4th October, 2016

ORDER:

1. Mr. Mundhe, the learned counsel for the petitioners submits that petitioner Nos. 2 and 3 have submitted proposal seeking approval to the appointment of petitioner No.1 in these petitions. The said proposal is refused only on the ground that on the relevant date, there was ban on recruitment. The learned counsel submits that three posts became vacant. The Institution, on 10th September, 2012, sought permission from the Education officer to fill in the said posts. No communication was received for a long

time. Thereafter, the petitioners advertised the said post on 1st December, 2012. Interviews were held and after following due selection process, the petitioner No.1 in all these petitions were selected as Assistant Teachers and Supervisor. The learned counsel submits that there are total 19 sanctioned posts. Still there are two posts vacant and the petitioners undertake to fill in the said posts by absorbing the surplus candidates as would be directed by the Education Officer. The learned counsel submits that the said posts could not have been kept vacant for a long time as the students would have suffered.

2. Mrs. Deshpande, the learned AGP states that in fact, the petitioner should have confirmed from the Education Officer about the availability of surplus candidates and thereafter, if the the Education Officer would have permitted, the petitioner then only would have advertised the posts. There is no concept of deemed permission. According to the learned AGP, there are large number of surplus candidates who are required to be absorbed and for the said purpose, the Government resolution dated 2nd May, 2012 was issued. The respondents cannot be allowed to flout the same. As on the date of filing the affidavit also, there are about

162 surplus teachers in the Beed District.

3. We have considered the submissions.

4. No doubt, the Government Resolution dated 2nd May, 2012, at the relevant time, was holding the field. It is a matter of record that the petitioners have applied for filling in the two posts of Assistant Teachers and one post of Supervisor vide application dated 10th September, 2012. No communication was received from the Education Department and on 1st December, 2012, the advertisement was issued. After lapse of two months of seeking the permission, the institution has filled in the said posts.

5. Even till date, the respondent Education officer has not directed any surplus teacher to be absorbed in the petitioner Institution. We would have considered the case of the respondents had the respondents directed the surplus teachers to be absorbed in the petitioner Institution and the institution had defaulted by not absorbing the surplus teacher. But till date, no surplus teacher is directed to be absorbed in the petitioner Institution. The petitioner Institution did wait for almost two months before filling in the said posts. Permission was also sought.

To show the bonafides, the petitioner Institution has given an undertaking that the two posts are still vacant and the same would be filled in by absorbing the surplus teachers as would be directed by the Education Officer. We accept the said statement as an undertaking to this Court. The Education Officer may sent two surplus teachers to the petitioner Institution and the same would be absorbed by the petitioner Institution.

6. Considering the above circumstances in toto, the impugned order refusing approval to the appointment of petitioner no.1 in each of the petitions is quashed and set aside. The respondent Education Officer shall reconsider the proposal seeking approval to the appointment of the petitioners in each of the petitions afresh, on its own merits and shall not reject it on the count that at the relevant time, there was ban on recruitment and decide the same expeditiously, preferably within three months.

7. Writ petitions are accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC