

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3064/2015

East Khandesh Education Society,
Jalgaon & another.

...Petitioners..

Versus

The State of Maharashtra & another.

...Respondents...

.....

Shri A.G. Talhar, Advocate for petitioners.

Shri M.B. Bharaswadkar, AGP for respondent nos.1 & 2.

.....

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

DATE: 26.09.2016

ORDER :

1] The proposal seeking approval to the appointments of Umesh Bhaurao Jadhav and Vishal Subhash Bindval is rejected. The learned counsel for the petitioners submits that these employees were appointed as Assistant Teachers. The said posts became vacant on account of retirement of the existing Assistant Teachers. On 30.3.2012, the petitioners moved the Education Officer seeking permission to fill in the said posts, however, no communication was received. On 14.10.2012, advertisement

- 2 -

was published inviting applications from the interested candidates to fill in the said posts of Assistant Teachers. After following due procedure of law, these two persons were appointed as Assistant Teachers vide appointment order dated 6.12.2012. The learned counsel submits that the approval to their appointment is rejected only on the ground that there was a ban for recruitment as per the Government resolution dated 2.5.2012. According to the learned counsel, the petitioners have sought information under the Right to Information Act about the number of surplus teachers. The petitioners were communicated that for the academic year 2012-13, there were no excess teachers.

2] The learned AGP submits that the petitioners were intimated vide letter dated 20.10.2012 that the permission to fill in the said posts cannot be granted in view of the fact that surplus teachers are required to be absorbed, still the petitioners proceeded ahead by filling in the said posts. According to the learned AGP, the approval has been rightly rejected as the petitioners have failed to accommodate the surplus teachers.

3] It is not disputed that on 30.3.2012, the

- 3 -

petitioners had moved an application with the respondent no.2 for filling in the vacant posts. Till the date of issuance of advertisement on 14.10.2012, no communication was made by the Education Officer to the petitioners.

4] For the first time, the petitioners were communicated vide letter dated 20.10.2012, which appears to have been received by the petitioners on 31.10.2012 i.e. much after the advertisement being issued and the applications received pursuant to the same.

5] It is submitted by the petitioners that the petitioners have also moved the authorities for sanction of additional posts considering the strength of students and the same is pending with the authority. The petitioners have undertaken that in case the additional posts are sanctioned, the same would be filled in by accommodating the surplus candidates as would be recommended by the Education Officer. We accept the said undertaking.

6] It would appear that the persons appointed are working for more than three years. The petitioners had approached the authority vide letter dated 30.3.2012 seeking permission to fill in the posts. However, for

- 4 -

seven months, no communication was received by the petitioners. The petitioners proceeded ahead with the advertisement. The petitioners could not have kept the posts vacant for a long period as that would have affected the academic curriculum of the students.

7] It is also not the case that the Education Officer had directed the petitioners to absorb the surplus candidates and the petitioners had failed to absorb the surplus candidates.

8] Considering the aforesaid conspectus, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal sent by the petitioners seeking approval to the appointment of the two Assistant Teachers as detailed in the said proposal dated 31.5.2014 (page no.42 of the petition) on its own merits and in accordance with law and shall not reject it only on the ground that there was ban on recruitment as per the Government resolution dated 2.5.2012. Writ petition is accordingly disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)