

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

WRIT PETITION NO. 11794 OF 2015

Jivan Fulchand Kawale

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri S. S. Jadhavar, Advocate for the Petitioner.

Shri V. S. Badakh, A.G.P. for Respondent Nos. 1 and 2.

The Respondent Nos. 3 and 4 served.

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

DATE : 28TH SEPTEMBER, 2016.

PER COURT :

. The proposal seeking approval to the appointment of the petitioner as Junior Clerk is rejected. Mr. Jadhavar, the learned counsel submits that, the post of junior clerk with the respondent No. 4/school became vacant on account of voluntary retirement of the persons working on the said post. On 03.07.2012 the management filed an application seeking permission from the office of the respondent No. 2 to advertise and fill in the post. No response was received. Thereafter on 10th August, 2012 advertisement was issued in the news paper. Candidates were called for interview and the petitioner was selected and issued appointment order on 14.08.2012. The learned counsel submits

that, the proposal seeking approval to the appointment of the petitioner is rejected solely on the ground that, prior permission of authority is not obtained while issuing the advertisement. The learned counsel submits that, management waited for more than one month. The said post could not have been kept vacant. More over under the Right to Information Act, information was received that, there was not a single junior clerk surplus during the academic year 2012-2013.

2. Mr. Badakh, the learned Assistant Government Pleader submits that, at the relevant time there was ban on recruitment as surplus candidates were required to be absorbed. The management failed to obtain prior permission from the Education Department. The order is rightly passed.

3. It would be seen that, earlier ban on recruitment on account of financial constraint was only upto 30.06.2012. The present appointment is subsequent thereto.

4. It is not a case that, the management of the respondent No. 4 had not applied seeking permission. It appears from the record that, on 03rd July, 2012 an application was given to the Education Department seeking permission to fill in the post of clerk. No response was received from the Education Department and thereafter on 14.08.2012 the said post was filled in.

5. The purpose of seeking permission from the authority is that, if any surplus clerks existed then, the same are required to be absorbed. The information received by the petitioner Under the Right to Information Act is placed on record, which states that, for the academic year 2012-2013 and 2013-2014 there was not a single junior clerk surplus.

6. Considering the aforesaid aspect, the impugned order is quashed and set aside. The Education Officer (Secondary) shall reconsider the proposal submitted by the respondent No. 4 seeking approval to the appointment of the petitioner as a clerk on its own merits, in accordance with law and policy and shall not reject it on the ground that prior permission was not obtained by the management before appointing the petitioner, so also that, there was ban on fresh recruitment. The same be decided expeditiously and preferably within a period of four (4) months from today. The writ petition is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]