

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

940 WRIT PETITION NO. 419 OF 2015

ARYAN SHIKSHAN PRASARAM MANDAL, NANDED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners Mr. S. R. Choukidar
AGP for Respondents State: Mrs. V. H. Patil
Advocate for Respondent No.3 : Mr. V. S. Panpatte
Advocate for Respondent No.4 : Mr. M. P. Narwadkar

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

DATE : 17th February, 2017

ORDER:

1. Mr. Choukidar, the learned counsel for the petitioner states that respondent No.4 was appointed on 07.03.2012 as the person working on the said post had retired. The appointment was made after following the due procedure of law, by issuing advertisement and following selection process. The learned counsel submits that the proposal seeking approval to the appointment of respondent no.4 is forwarded in the year 2012, 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. Mr. Panpatte, learned counsel for the Education Officer submits that large number of surplus teachers are required to be absorbed. The petitioner could not have appointed respondent No.4 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 no.4 in the year 2012 upon retirement of a teacher and the post becoming available.

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 2012.

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, Respondent no.3 Education Officer shall decide the proposal submitted by the petitioner seeking approval to the appointment of the respondent 4 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 months.

7. 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.)

JPC