

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3843 OF 2016

Mahatma Gandhi Shikshan Sanstha
and others

.. **Petitioners**

Versus

The State of Maharashtra and another

.. **Respondents**

Shri Santosh S. Jadhavar, Advocate for the Petitioners.

Shri S. B. Pulkundwar, A. G. P. for Respondents.

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATE : 10th October, 2017

PER COURT :

1. The proposal seeking approval to the appointment of petitioner is not granted and the same is rejected.

2. Mr. Jadhavar, learned counsel submits that on retirement of one person as a Clerk the petitioner No. 3 was appointed as a Clerk. Prior to his appointment the application was made asking the Education Officer to send any other surplus candidate for appointment as a Clerk or to permit the petitioner Nos. 1 and 2 to advertise the said post. The learned counsel, submits that the said proposal was submitted to the Education Officer on 23.10.2013. No response was received from the Education Officer. Thereafter, the petitioner No. 1 advertised the said post on 1st June 2014. Pursuant to the advertisement the applications were received, the petitioner No. 3 was selected and

the appointment order is issued to the petitioner No. 3. The learned counsel submits that under Right to Information Act the petitioner applied to the Education Officer seeking list of surplus Clerks in the academic year 2013-2014. The reply was received from the Deputy Education Officer that not a single Clerk is surplus in the said academic year. The learned counsel submits that it was erroneous on the part of the respondent to reject the said proposal.

3. Learned A. G. P. states that prior permission of the Education Officer was not obtained. At the relevant time there was ban on recruitment as per the Government Resolution dated 10th June 2010 and 30th June 2011. Even there was difference in the appointment letter and the joining date. For all these reasons the proposal is rightly rejected.

4. The respondent Education Officer in his affidavit has admitted that he has received application from the petitioner seeking permission to fill in the post. The said application also request the Education Officer to send a surplus candidate as a Clerk. Though the said application is received on 23.10.2013, no communication is made by the Education Officer and eventually on 1st June 2014 i.e. after lapse of 8 months advertisement is issued for filling in the post of Clerk. It appears that the petitioner No. 3 is appointed pursuant to the said advertisement. Considering the said facts it is erroneous on the part of the Education Officer to reject the proposal on the ground that prior

permission is not obtained for filling in the post. After the appointment order is issued the candidate would join the post. The date of appointment and joining may be different that itself could not have been appropriate ground to reject the proposal seeking approval to the appointment.

5. Even the petitioner had applied under Right to Information Act seeking details of the Clerks who are surplus in the academic year 2013-2014. Reply is received by the Deputy Education Officer to the effect that not a single Clerk was surplus during the said academic year. The petitioner is also from N.T. category as submitted and the ban on recruitment would not apply to reserved category candidate.

6. In light of the above, the impugned order is quashed and set aside. The respondent – Education Officer shall reconsider the said proposal seeking approval to the appointment of petitioner as a Clerk and shall not reject it on the grounds on which the impugned order was passed. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner afresh on its own merits, expeditiously and preferably within 3 months.

7. The writ petition is disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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