

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4622 OF 2016

Varsha Sheshrao Kapate and others .. **Petitioners**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Pratap G. Rodge, Advocate for the Petitioners.

Shri K. D. Mundhe, A. G. P. for the Respondent Nos. 1 and 2.

Shri P. G. Gunale h/f. Shri Satish S. Deshmukh (Patnurkar),
Advocate for Respondent Nos. 3 and 4.

WITH
CIVIL APPLICATION NO. 9768 OF 2016

Shivaraj Madhavrao Patil .. **Applicant**

Versus

Varsha Sheshrao Kapate and others .. **Respondents**

Shri P. M. Shinde h/f Shri P. B. Jadhav, Advocate for the
Applicant.

Shri P. G. Rodge, Advocate for the Respondent Nos. 1 to 3.

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

DATE : **7th November, 2017**

PER COURT :

1. The proposal seeking approval to the appointment of the
petitioner is rejected.

2. We have heard the learned counsel for respective parties.

3. It is a case of the petitioner that the Management on 23.9.2013 had applied to the Education Officer seeking permission to fill in the post. No response was received from the Education Officer, as such, Management issued an advertisement on 17.11.2013, inviting applications. The petitioners had applied. The petitioner No. 1 had applied from S.T. category and petitioner Nos. 2 and 3 had applied from O.B.C. category. The petitioners were selected and subsequently appointment order was issued on 2.12.2013.

4. The reason for refusal of approval is non adherence to Rule 9 (2) of the M.E.P.S. Rules.

5. It appears that as no response was received from the Education Officer the Management had issued advertisement in the news paper as the posts were vacant. The Management would not have remained silent for longer period as the said posts were vacant and the students would suffer. Moreover, the petitioners being from reserved category the ban on recruitment would also not apply.

6. The only dispute is that the School Committee was not properly constituted as per Rule 9 (2) of the M.E.P.S. Rules. If the single member is absent on the date of interview it would

not vitiate the entire selection process. However it is for the Authority to get satisfied about the selection process being adhered to. It appears that there is a dispute in the Management. Rival persons are claiming to be the Secretary of the Society.

7. The Education Officer is required to consider the roster and adherence to the selection process.

8. Considering the above, we set aside the impugned order and relegate the parties before the Education Officer. The parties are at liberty to place before the Education Officer the record of the selection of the petitioners. The approval shall not be rejected only on the ground that there were surplus candidates or that the permission was not obtained. The rival parties can put forth their submissions before the Education Officer which the Education Officer will consider and take decision upon it afresh expeditiously and preferably within four (4) months.

9. The writ petition accordingly disposed of. No costs.

10. In view of disposal of writ petition, civil application also stands disposed of.

[S. M. GAVHANE, J.]

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[S. V. GANGAPURWALA, J.]