

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

BENCH AT AURANGABAD.

WRIT PETITION NO.6444 OF 2016.

Anand S/o Sopanrao Jondhale ... Petitioner.

Versus

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

...

Mr.V.P.Kadam, advocate for the petitioner.
Ms.R.P.Gour, A.G.P. for the State.
Mr.K.D.Bade Patil, advocate for Respondent Nos.4
and 5.

...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 11.09.2017.

PER COURT :

1. The proposal seeking approval to the appointment of the petitioner as an Assistant Teacher in Ashram School is rejected. Mr.Kadam, learned counsel submits that the advertisement was issued to fill in the post of Assistant Teacher from S.T. category. The advertisement

also states that if the person from S.T. category is not available then the person from S.C. category would be appointed. The petitioner belongs to S.C. category. The learned counsel relies on the judgment of the Apex Court in the case of **"Asha Shamkumar Patil Vs. Sadhana Rajan Kamble and others"** reported in **2007 (6) Bom.C.R. 402**. The learned counsel also relies on Rule 9(a)(7) and 9(a) of the MEPS Rules.

2. Mr.Bade Patil, learned counsel supports the case of the petitioner.

3. Learned A.G.P. states that as the post was reserved for S.T. category, the appointment of petitioner has to be temporary. Only S.T. category candidate is to be appointed.

4. Perusal of Rule 9 Sub-rule (7) and Sub-rule 9(a), it is manifest that if the candidate of the category for which the post is reserved is not available then the post may be filled in by selecting candidate from other remaining category as detailed in sub-rule (7) of Rule 9 of the MEPS

Rules. Reference can also be had to the judgment of the Apex Court in the case of "**Asha Shamkumar Patil Vs. Sadhana Rajan Kamble and others**" referred to supra.

5. In light of the above, the impugned order is quashed and set aside. The Respondent-authority shall reconsider the proposal seeking approval to the appointment of the petitioner on its own merits expeditiously, preferably within four (4) months and shall not reject it only on the ground that the post was meant for S.T. category candidate.

6. The Writ Petition is accordingly allowed. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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