

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8562 OF 2016

Sonali Hiralal Mehetre

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri Amol N. Kakade, Advocate for the Petitioner.

Shri S. W. Mundhe, A. G. P. for Respondent Nos. 1 and 2.

Shri Ganesh P. Darandale, Advocate for Respondent No. 3.

WITH

WRIT PETITION NO. 8563 OF 2016

Sonyabapu Navnath Jadhav

.. **Petitioner**

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Shri S. W. Mundhe, A. G. P. for Respondent Nos. 1 and 2.

Shri Ganesh P. Darandale, Advocate for Respondent No. 3.

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

DATE : 14th September, 2017

PER COURT :

1. The petitioners herein were appointed as Shikshan Sevak on 16.1.2012. The proposal seeking approval to their appointments is rejected.

2. We have heard Mr. Kakade, learned counsel for the petitioners and Mr. Mundhe, learned A. G. P., so also, learned counsel for the Institution.

3. The following dates are undisputed:

(i) Advertisement is issued in October - 2011.

(ii) The last date for filing application was 25.11.2011.

(iii) The date of interview is 15.1.2012.

(iv) The date of appointment of the petitioners is 16.1.2012.

(v) The petitioners acquired D.Ed. Qualification on 3.1.2012.

(vi) The petitioners appeared for the Final D.Ed. exam in September - 2011.

4. The proposal seeking approval to the appointments of petitioners is rejected solely on the ground that on the last date of filling applications the petitioners did not possess the qualification of D.Ed.

5. It is trite that when the advertisement does not prescribe the date within which the petitioners should have acquired the qualification then, the last date for filing application is the material date prior to which the candidates should have the requisite qualification.

6. The petitioners acquired the qualification on 3rd January, 2012. The last date for filling application was 25th November,

2011. The petitioners no doubt acquired the necessary qualification before the interviews were conducted i.e. 15.1.21012.

7. The petitioners herein belonging to S.T. and S.B.C. reserved category. The petitioners have already put in 6 years of service. Nobody has challenged their appointments nor any candidate has made any grievance against the selection of the present petitioners. There is nothing before the court to suggest what weighed with the selection committee to relax the said condition to the petitioners or that, whether it was considered by the Selection Committee at the time of interview that before the interview the petitioners have already acquired the necessary qualification. Six years have already lapsed, the petitioners are functioning. It is a fact that on the date of their appointments the petitioners were possessing necessary qualification.

8. Though strictly the Selection Committee could not have interviewed the petitioners as on the last date of filling application, the petitioners did not possess the necessary qualification but taking into account the circumstances referred to supra i.e. the petitioners are working for more than 6 years continuously, no other person had assailed the selection of the present petitioners nor made any grievance about it, so also, there is nothing on record to suggest what weighed with the Selection Committee while relaxing the said condition and

considering that on the date of appointments petitioners possesses the necessary qualification; in equity we are inclined to protect the appointments of the petitioners. Reference can be had to the judgment of the Apex Court in a case of, **Mrs. Rakha Chaturvedi Vs. University of Rajasthan and others**, reported in **1993 SCC Supl. (3) 168**. The Apex Court, in similar circumstances had protected the selection of such candidates. Para 6 of the judgment of the Apex Court in a case of, *Mrs. Rakha Chaturvedi (Supra)* reads thus;

“6. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University

that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process.”

9. Considering the above, by way of an exception we pass the following order:

ORDER

I] The impugned order is quashed and set aside.

II] The Education Officer shall consider the proposal seeking approval to the appointments of the petitioners on its own merits and shall not reject it on the ground that the petitioners were not possessing necessary qualification on the last date of filling application.

III] The said proposal be decided expeditiously and preferably within 4 months.

10. The writ petitions are accordingly disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]