

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

BENCH AT AURANGABAD.

WRIT PETITION NO.8092 OF 2016

Parvati Vishwanath Villapwad ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

...

Mr.N.L.Jadhav, advocate holding for
Mr.L.S.Shaikh, advocate for the petitioner.
Mr.S.W.Munde, A.G.P. for the State.
Mr.N.S.Kadam, advocate for Respondent No.3
Mr.V.S.Panpatte, advocate for Respondent Nos.4
and 5.

...

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

Date : 20.11.2017.

PER COURT :

1. Mr.Jadhav, learned counsel submits that the petitioner is appointed as Assistant Teacher from the Scheduled Tribe category pursuant to the advertisement dated 24.9.2013. The learned counsel submits that after undergoing selection

process the petitioner was appointed on 1.10.2013. The ban on recruitment would not arise for a reserved category candidate. The order refusing approval is illegal.

2. Mr.Kadam, learned counsel for the Education Officer submits that large scale illegalities have been committed. The Education Officer after considering that there are large number of surplus candidates to be absorbed, so also the advertisement is not properly given, the roster is not verified, has rightly rejected the proposal for approval.

3. Mr.Panpatte, learned counsel for the institution submits that on 4.7.2011, the Head Master has given application to the Education Officer regarding the vacancy from S.T. category and requested the Education Officer to send the surplus teacher as the said post is vacant. No response was received for almost two years, as such the institution on 24.9.2013 published an advertisement for filling in the post of Assistant Teacher from S.T. category. The learned

counsel submits that after following due selection process, the petitioner has been selected and appointed as a Shikshan Sevak. The roster is already submitted to the Education Officer on 2.11.2017.

4. We have considered the submissions. It appears that as contended by the institution on 4.7.2011, application was made to the Education Officer requesting Education Officer to send any surplus teacher from S.T. category. No response was received for a long period. As such the petitioner advertised the post on 24.9.2013 and the petitioner was selected and appointed as Shikshan Sevak on 1.10.2013.

5. For appointment from reserved category the ban on recruitment would not apply. Of-course, the Education Officer will have to consider the roster. It will not be open for the Education Officer to raise the plea of surplus candidate being absorbed as application was given by the institution to send the surplus teachers to its institution from S.T. category, however,

no surplus teacher was sent and almost after two years the advertisement was issued.

6. Considering above, we pass the following order :

a) The impugned order is quashed and set aside.

b) The Education Officer shall submit the roster sent by the Management to the appropriate authority within a period of three (3) weeks from today. The appropriate authority shall verify the said roster within two (2) months from the receipt of the same. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner afresh within two (2) months after receiving verified roster.

c) The Education Officer shall not reject the proposal on the ground that there was ban on recruitment or that surplus candidates were not absorbed or that permission was not sought. The

petitioner may appear before the Education Officer on 4.12.2017.

d) Interim relief granted earlier shall continue till the decision by the Education Officer on the proposal seeking approval to the appointment of the petitioner.

e) The Writ Petition is accordingly disposed of. No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp8092.16

