

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8134 OF 2016

Asha Sureshrao Marpalikar

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri S. R. Choukidar, Advocate for the Petitioner.

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

Shri Nitin S. Kadam, Advocate for the Respondent No. 3.

Shri V. S. Panpatte, Advocate for Respondent Nos. 4 and 5.

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

DATE : 13th November, 2017

PER COURT :

1. We have heard Mr. Choukidar, learned advocate for the petitioner and Mr. Kadam, learned advocate for the respondent No. 3.

2. Mr. Choukidar, learned advocate submits that the Management made an application to the Education Officer for filling in the post, however, the said application was not accepted. Subsequently the Management advertised the post for filling the post of Shikshan Sevak from S.T. category and further note was given that if S.T. category candidate is not available then the post shall be filled in from candidate of other reserved category. The learned counsel submits that petitioner belongs to

S.C. category. No candidate from S.T. category was available and even as per Rule 9 (7) of the M.E.P.S. Rules, the said interchangeability of the reservation is permissible. The roster is sent by the Management for approval to the Education Officer a week back.

3. It is further submitted that the respondent No. 3 has not complied the order of this court dated 6th June, 2017.

4. Mr. Kadam, learned advocate submits that the advertised post was meant for S.T. category. The petitioner belongs to S.C. category. The roster is also not verified. The procedure for appointment is not followed. As such, the order is rightly passed.

5. The petitioner was appointed with effect from 1st February, 2012. The said appointment is prior to the Government Resolution dated 2nd May, 2012, putting ban on fresh recruitment. Even otherwise, it has been held in number of matters that ban on recruitment does not apply to the reserved category candidates. It also appears that the petitioner is appointed on the post that was to become vacant on the retirement of one Assistant Teacher, who was due to retire on 31st January, 2012. The contention of the petitioner that the Management had moved the application to the Education Officer but was not accepted does not seem to be controverted.

6. Considering the above, we pass the following order.

ORDER

I] The respondent No. 3 shall comply the order dated 6th June, 2017.

II] The Education Officer shall forward the roster submitted by the Management for approval to the Competent Authority within two (2) weeks.

III] The Competent Authority shall verify the said roster and pass orders upon it within a period of two (2) months from the date of receipt of the said roster.

IV] Upon receipt of the verified roster, the Education Officer shall take decision afresh on the proposal of the petitioner within a period of two (2) months from the date of receipt of approved roster.

V] The Education Officer shall not reject the proposal on the ground that there was ban on recruitment or that surplus candidates were available or that permission to fill in the post was not obtained.

VI] The Education Officer shall also consider the contention of the petitioner for interchangeability of the reservation as per Rule 9(7) of the M.E.P.S. Rules.

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

[S. M. GAVHANE, J.]

marathe/Nov.17

[S. V. GANGAPURWALA, J.]