

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

WRIT PETITION NO. 9709 OF 2016

Shubhangi d/o. Bhagwat Chate & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.V.S. Panpatte, Advocate for the petitioners.

Ms.R.P. Gour, AGP for respondent/State.

Mr.P.D. Suryawanshi, Advocate for respondent No.2.

Mr.Milind Patil (Beedkar), Advocate for respondent No.4.

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

DATED : 23.11.2017

P.C. :-

1. The proposal seeking approval to the appointment of the petitioner is rejected. Aggrieved thereby, the present petition.

2. Mr. Panpatte, learned advocate for the petitioners submits that vacancy had occurred for the post of Shikshan Sevaks on retirement of erstwhile Assistant Teachers. As such the management on 23.10.2013 filed application bringing it to the notice of Education

Officer that vacancies are to be filled in. The respondent did not communicate to the management. The management issued four reminders. However, no steps were taken by the Education Officer. On 20.06.2014, advertisement was issued for filling in posts. Petitioner Nos.1,2 and 3 appeared before the Selection Committee, were selected and appointed as Shikshan Sevaks on 12.08.2014. Petitioner Nos.1 and 2 are appointed from open category. Petitioner No.3 is appointed from Scheduled Tribe category. Petitioner No.4 is appointed on compassionate ground in place of his father. He belongs to Scheduled Caste category. Proposal seeking approval to the appointment of the petitioners is rejected only on the ground that permission of the Education Officer is not obtained and there are surplus candidates to be absorbed. The ban on recruitment does not apply to candidates from reserved category and the management after waiting for considerable long time, had filled in the posts.

3. Mr. Patil, learned Counsel for the Management submits that the posts were lying vacant. Time to time, applications were given to the authority for filling in the posts, no response was received and eventually on 20.06.2014, advertisement was given and after following due selection process, appointment orders are issued on 12.08.2014.

4. Mr. Suryawanshi, learned advocate for the respondent authority submits that the provisions of section 5 of the MEPC Act, have not been followed. Unless and until the Education Officer grants permission, the Management could not have filled in posts. There are surplus candidates to be absorbed. The Government Resolution dated 02.05.2012 was in force. Under the said Government Resolution, there was ban on recruitment of fresh staff. The then Education Officer was hand in glove with the Management and allowed the illegality to go on. Action has been taken against the said Education Officer. According to learned Counsel, as appointment is

against the Government Resolution dated 02.05.2012 so also against the provisions of section 5 of the MEPS Act, the proposal seeking approval to the appointments of the petitioners is rightly rejected. Learned advocate relies on the judgment and order of Division Bench of this Court in the case of Ku. Sonal Govardhan Tiple & Ors. Vs. State of Maharashtra , reported in 2016 (5) Mh.L.J.656 and judgment and order of learned Single Judge of this Court in Writ Petition No.9076 of 2016 dated 31.08.2016.

5. We have considered the submissions. There cannot be any dispute with the proposition that the appointments of the Shikshan Sevak has to be in conformity with the provisions of section 5 of the MEPS Act. Even the Government Resolution dated 02.05.2012 has also to be abided by.

6. Time and again it has been held that ban on recruitment as per Government Resolution dated 02.05.2012 does not apply to filling in posts from the reserved

category candidates. Petitioner No.3 is appointed from Scheduled Tribes category and petitioner No.4 is appointed from Scheduled Castes category. Moreover, he is also appointed on compassionate ground on which ban of recruitment could not have been an impediment. It would appear that posts were vacant because of retirement of Assistant Teachers. As such the Management on 23.01.2012 moved the authorities intimating authority of the vacancy available with the institution. The authority did not take any steps pursuant to the application and did not send any surplus candidate to institution for being absorbed in the said institution. It appears that four times reminders were issued by the institution to the Education Officer. But the Education Officer did not take any steps to send any surplus candidate to the respondent institution and eventually after eight months respondent institution issued advertisement dated 20.06.2014 and after following selection process, petitioners are appointed on 12.08.2014. We would have appreciated arguments of Mr.Suryawanshi, learned advocate

that, had the Education Officer sent some surplus teachers to be absorbed in the respondent institution and the respondent institution would not have abided by it. But that is not the case. Respondent-institution time and again was giving applications to the Education Officer but the Education Officer turned blind eye to the said applications and after waiting for eight months advertised the said posts. Four posts were vacant without Assistant Teachers/Shikshan Sevaks. Students would be sufferers, if for long period teacher is not appointed. Surplus teachers were not directed to be absorbed by the respondent institution in the year 2012-13, 2013-14 and 2014-15. It was lethargy on the part of the authority. Considering the aforesaid conspectus of the matter, judgment referred by the respondents would be of no assistance.

7. Considering the above, the impugned order rejecting proposal seeking approval to the appointment of the petitioner is set aside. The Education Officer shall

reconsider the proposal seeking approval to the appointments of the petitioners afresh on its own merits and it shall not reject the said proposal on the ground that prior permission was not obtained or that there was ban on recruitment or that surplus candidates were available. Said proposal be decided expeditiously, preferably within three months.

8. The writ petition is disposed of. No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]