

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

WRIT PETITION NO. 9713 OF 2016

**SEEMA BALIRAM UNAWANE AND
ASHWINI ASHOK EKHANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**Advocate for Petitioners : Panpatte V.S.
AGP for Respondents: Mr.S.W.Mundhe for R.1 to 3.
Advocate for Respondent no.4 : Mr.P.D.Suryawanshi
Advocate for Respondent no.5 : Mr.Milind Patil (Beedkar)**

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

DATE : 08/09/2017

PER COURT :-

Mr.Panpatte, learned counsel submits that after following due selection process, petitioner no.1 was appointed as Shikshan Sevak from Scheduled Caste category [SC] on 23/7/2012 and petitioner no.2 on the same date was appointed as Shikshan Sevak from Other Backward Category[OBC]. The advertisement pursuant to which the petitioner has applied, was issued on 7/7/2012. The learned counsel submits that the Education Officer also granted approval to the appointment of petitioner as Shikshan Sevak under order dated 16/7/2013.

2] The learned counsel submits that on completion of three years as Shikshan Sevak, the management passed resolution confirming services of the petitioner as Assistant Teacher, the proposal is submitted for grant of permanent approval, the same is not decided.

3] Mr.Patil, learned counsel for respondent no.5 submits that petitioners were appointed after following due selection process. On 7/4/2012, respondent no.5 applied to the Education Officer [Primary] seeking approval to the advertisement to be issued, no response was received, thereafter second application was given on 21/5/2012, still no response was received to the same, thereafter, the advertisement was issued on 7/7/2012. The post could not be kept vacant for a long period. After following selection process, the petitioners were selected for the post reserved for SC and SBC category candidates. The said appointment is as per roaster.

4] Mr.Suryawanshi, learned counsel for respondent no.4 Education Officer submits that the then Education Officer has improperly granted the approval to the appointment of the petitioners for which an enquiry has been directed to be initiated. The learned counsel submits that at the relevant time, there was ban on recruitment in view of the Government Resolution dated 2/5/2012. The learned counsel further submits that the management was not

given permission to fill in the post, considering the fact that large number of surplus teachers were required to be absorbed. According to the learned counsel, as the appointment of the petitioner, itself is illegal and against the Government policy, the approval could not be granted. Even to the respondent no.5 institution, the Education Officer had directed absorption of surplus candidates. The learned counsel relies on the order passed by this Court at its principle seat in Writ Petition No.8587/2016 with connected Writ Petitions under order dated 10/7/2017.

5] We have considered the submissions. From the documents placed on record before us. It appears that the respondent institution had applied to the Education Officer [Primary] on 7/4/2012 and 21/5/2012 seeking approval to the advertisement to be issued, however, it appears that the Education Officer pursuant to these applications did not give any response. The posts were required to be filled in, on retirement of three Assistant Teachers. It also appears that the advertisement was finally issued on 7/7/2012 and the petitioners, thereafter came to be appointed on 23/7/2012. The appointment of the petitioners was approved by Education Officer on 16/7/2013.

6] It also appears that the petitioners are appointed from reserved

category. This Court under order dated 9/3/2017, in Writ Petition No.10580/2015 with connected Writ Petitions at its principal seat, has observed that prior to the G.R. dated 2/5/2012, the G.R. dated 13/4/2011 is issued and as a special case, the institutions are allowed to fill in the posts reserved for the backward category candidates and as such the ban imposed by G.R. dated 2/5/2012 would not apply.

7] Moreover, it can be seen that till date the Education Officer has never directed the respondent Institution, to absorb surplus teachers from S.C. Or S.B.C. category. It appears that in October, 2016, the Education Officer had directed the respondent institution, to absorb the surplus candidates, that too from general category.

8] Considering the aforesaid prospects of the matter, the grounds raised by respondent no.2 in its affidavit, would not be sufficient in not granting permanent approval to the petitioners.

9] Considering the above, respondent authorities shall consider the proposal for grant of permanent approval to the appointment of petitioners and the same shall not be rejected, on the ground that there was a ban on recruitment or that surplus candidates were required to be absorbed. The same shall be decided expeditiously

preferably within three months.

10] Writ Petition accordingly disposed of. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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