

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

WRIT PETITION NO. 1899 OF 2016

NILESH SUBHASH PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.K.J.Ghate, Advocate h/f Mr.Manish P. Tripathi,
Advocate for the petitioner
Mr.S.W.Mundhe, AGP for the respondent/State
Mr.Nitin S. Kadam, Advocate for the respondent No.4,5

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.
DATED : 06.11.2017**

P.C. :-

. The petitioner assailed the order dated 08.04.2015 rejecting the proposal seeking approval to the appointment of the petitioner to the post of 'Clerk'.

2. We have heard learned counsel for the respective parties and the learned AGP.

3. The proposal is rejected basically on the ground that permission for advertisement is not obtained. The selection process is not as per the M.E.P.S. rules and

that there was ban on recruitment on non-teaching staff. It is stated that the Management had given application on 25.09.2012 seeking permission to fill in the post of Clerk. No response was received from the Education Officer. Thereafter the post was advertised on 29.05.2014 and the petitioner came to be selected and appointed on 16.06.2014.

4. It is not the case that the Education Officer had directed the Institution to absorb any surplus candidate for the post of Peon from open category. For more than two years the Management persuaded the Education Officer to give permission to advertise the post. For two years no response was given by the Education Officer and eventually post was advertised. According to the respondent there was ban on recruitment on the ground that large number of surplus candidates are to be absorbed. But all these years the Education Officer never sent any surplus candidate to the respondent Institution to be absorbed as Peon as stated by the

respondent Institution.

5. In light of the above the impugned order is quashed and set aside. The respondent Education Officer shall consider the availability of the post and shall not reject on the ground that there was ban on the recruitment or that permission was not obtained before advertising the post. The said proposal be re-considered afresh expeditiously, preferably within four months. The writ petition stands disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]