

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

WRIT PETITION NO.10584 OF 2016

Harshal s/o. Vinayak Khairnar	..Petitioner
Vs.	
The State of Maharashtra and ors.	..Respondents

AND

WRIT PETITION NO.10585 OF 2016

Shital d/o. Mothabhau Nikam	..Petitioner
Vs.	
The State of Maharashtra and ors.	..Respondents

AND

WRIT PETITION NO.10586 OF 2016

Chhaya Nimba Patil	..Petitioner
Vs.	
The State of Maharashtra and ors.	..Respondents

AND

WRIT PETITION NO.10587 OF 2016

Bhavna d/o. Jijabrao Baviskar and anr.	..Petitioners
Vs.	
The State of Maharashtra and ors.	..Respondents

AND
WRIT PETITION NO.10588 OF 2016

Damodar Naval Patil and anr. ..Petitioners

Vs.

The State of Maharashtra
and ors. ..Respondents

AND
WRIT PETITION NO.10589 OF 2016

Manojkumar s/o. Bhimrao Jadhav ..Petitioner

Vs.

The State of Maharashtra
and ors. ..Respondents

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Mr.V.S.Panpatte, Advocate for petitioners

Mr.S.B.Pulkundwar, AGP for respondent nos.1 and 2
- State

Mr.S.R.Choukidar, Advocate for respondent nos.3
and 4

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CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATE : APRIL 03, 2017

ORDER :

The petitioners in all these Writ
Petitions are appointed as Shikshan Sevaks for
either English or Maths or Science subject. In all

these petitions, except Writ Petition No.10586 of 2016, the petitioners are from O.B.C. category, whereas the petitioner in Writ Petition No.10586 of 2016, is in open category.

2. Mr.Panpatte, learned Counsel for the petitioners submits that before appointing the petitioners on vacant posts, the respondent - Institution had applied to the Education Officer seeking permission to fill-in the said posts. However, since no communication was received from the Education Officer, advertisement was issued to fill-in the said posts. The advertisement specifically stated that the posts were to be filled-in from O.B.C. category candidates. Pursuant to the said advertisement, the petitioners applied and after following the due selection process, they were appointed. The proposal seeking approval to the appointments of the petitioners was rejected by the respondent - Education Officer on two grounds: (i) proper

procedure was not followed and (ii) the posts were not filled-in as per the reservation.

3. The learned Counsel for the petitioners submits that the roster has been approved by the B.C. Cell and as per the approved roster only, the appointments of the petitioners have been made. Prior to passing of the impugned order, the Education Officer had communicated to the higher authority, that the petitioners were properly appointed according to the vacant posts and reservation was also properly applied. However, he, while passing the impugned order, has taken a somersault.

4. Mr.Chaukidar, learned Counsel for the respondent – Institution submits that the roster has been approved by the B.C. Cell. The roster was routed through the Education Officer and as such, the Education Officer was aware of the same.

Whatever number of surplus candidates were directed to be absorbed, those have been absorbed by the respondent – Institution. For the post, on which the petitioners were appointed, no surplus candidates were directed to be absorbed. The petitioners were appointed after following the due procedure of law and as per the backlog for the reserved category candidates.

5. Mr.Pulkundwar, learned AGP submits that the procedure has not been followed while filling-up the said posts. There was ban on recruitments. He submits that permission from the Education Officer was also not obtained. The roster was not followed and the backlog of the candidates belonging to Scheduled Castes and Scheduled Tribes, was also not followed. He submits that keeping some posts vacant, the persons from Open category and O.B.C. category could not have been appointed.

6. Mr.Panpatte, learned Counsel for the petitioners submits that for English, Maths and Science subjects, there was no surplus candidate from O.B.C. category in the said District.

7. We have considered the submissions canvassed by the learned Counsel for the parties. It appears that an application was forwarded by the Institution for permission to fill-in the said posts. The Education Officer, in the affidavit-in-reply, nowhere denied the averments about the application made by the Institution seeking permission to fill-in the posts. It appears that after issuing the advertisement, wherein it was mentioned that the posts were meant for reserved category candidates, the petitioners are appointed. As submitted on behalf of the petitioners and the Institution, that in respect of the posts on which the petitioners are appointed, at no point of time, the Education

Officer had directed the Institution to absorb any surplus candidate.

8. Be that as it may, it was for the Education Officer to direct absorption of the surplus candidate or to pass some order on the application made by the Institution seeking permission to fill-in the posts. In absence of this, it could not have been said that the Institution has faulted in issuing the advertisement and appointing the petitioners. It is for the Education Officer to consider the roster approved by the B.C. Committee and confirm about the vacant posts of O.B.C./Open category candidates and thereafter, consider grant of approval.

9. In the result, the impugned order is quashed and set aside. The Education Officer shall decide the proposal for approval to the appointments of the petitioners afresh and shall

not reject the same on the ground that during the relevant period, there was ban on recruitment or that permission was not obtained by the respondent – Institution prior to filling-up the said posts. The Education Officer shall also take into consideration the roster approved by the B.C. Cell. The decision be taken expeditiously and preferably, within a period of three months from the date of this order.

10. The petitioners or the respondent – Institution may appear before the Education Officer to point out the roster.

11. All the Writ Petitions stand disposed of accordingly. No costs.

[SANGITRAO S. PATIL, J.] [S.V. GANGAPURWALA, J.]