

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

BENCH AT AURANGABAD.

WRIT PETITION NO.11532 OF 2016

Vinod S/o Himmatrao Patil
and another. ... Petitioners.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.V.S.Panpatte, advocate for the petitioners.
Mr.S.W. Munde, A.G.P. for the State.
Mr.A.N.Nagargoje, advocate for Respondent Nos.3
to 5.

...

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

Date : 25.09.2017.

PER COURT :

1. The proposals seeking approval to the appointment of the petitioners are rejected. Aggrieved thereby, the present petition.

2. We have heard Mr.Panpatte, learned counsel for the petitioners, Mr.Nagargoje,

learned counsel for the institution and Mr.Munde, learned A.G.P. for the State.

3. The proposals are basically rejected on the ground that the roster is not followed. Prior permission is not obtained. The appointments are after the Government Resolution imposing ban on recruitment. Surplus candidates are required to be absorbed and the appointments are not as per the staffing pattern.

4. It appears that the petitioner No.1 is appointed on 17.6.2013 for which the advertisement is said to have been issued on 21.5.2013 and permission to advertise the post was applied for by the institution to the Education Officer on 13.10.2012. The petitioner No.1 is appointed for English subject. The petitioner No.2 is appointed on 16.6.2014 for which advertisement is issued on 13.5.2014 and application seeking permission to advertise the post is applied for on 20.4.2014.

5. Both these petitioners are appointed

from OBC category. The petitioners having been appointed from OBC category, ban on recruitment would not apply as the Government has relaxed ban for filling in the backward class category post by way of special drive.

6. Roster is filed on record. As per the said roster it appears that four posts for OBC are vacant. It is also stated that the Government had relaxed ban on recruitment for appointment of teachers for English subject. It is also not brought on record by the Respondents that during the period the applications were made by the institutions seeking permission to advertise and the appointments were made of the petitioners, the Education Officer had directed to absorb surplus candidates from OBC category and that the institution had not absorbed. On the contrary, it is stated by the institution that five surplus candidates are absorbed by the institution in the year 2013-14 and 2016-17.

7. In light of the above, the Education Officer was only required to consider due

adherence to the procedure while appointing the petitioners and the staffing pattern. The impugned order as such is quashed and set aside. The Education Officer shall take decision upon the proposals forwarded by the institution seeking approval to the appointment of the petitioners afresh and shall not reject it only on the ground that prior permission is not obtained. The Respondent-authority may consider staffing pattern as on the date the petitioners were appointed. The petitioners and the institution can represent themselves before the Education Officer and the Education Officer shall decide the said proposals afresh and preferably within three (3) months from today.

8. The Writ Petition is disposed of. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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