

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

**WRIT PETITION NO.781 OF 2017**

Shikshan Prasarak Mandal,  
Pimpri Raja,  
Tq. and Dist. Aurangabad  
through its President  
Udayraj s/o. Khanderao Pawar  
and anr.

..Petitioner

Vs.

The State of Maharashtra,  
Through its Secretary,  
Department of Secondary School  
Education and Sports,  
Mantralaya,  
Mumbai – 32  
and anr.

..Respondents

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Mr.S.V.Natu, Advocate for petitioner  
Mr.V.M.Kangne, AGP for respondent nos.1 and 2

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

**DATE : MARCH 20, 2017**

**ORDER :**

Heard.

2. Leave to correct the title clause as  
regards respondent no.2.

3. Mr.Natu, learned Counsel for the petitioners submits that petitioner no.1 – Institution runs petitioner no.2 – School. Two teachers in the said school stood retired on attaining the age of superannuation during the academic year 2015-2016. The petitioners, therefore, applied to respondent no.2 – Education Officer for permission to issue advertisement to fill-up the said posts. However, no response was received from the Education Officer. Thereafter, by issuing advertisement, the said posts were filled-in. A proposal was forwarded to respondent no.2 for granting approval to the said appointments. However, respondent no.2 – Education Officer has not yet granted approval on the ground that surplus teachers were not absorbed by the petitioners. The learned Counsel submits that said two teachers are appointed by the petitioners by following the due procedure of law.

4. The learned AGP for the respondents

submits that as per Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977, an Institution is required to seek permission from the Education Officer and only if any surplus teacher was not available, permission is given by the Education Officer to issue an advertisement. The learned AGP submits that even otherwise there was ban on recruitments and therefore, the petitioners could not have filled-in those two posts.

5. We have considered the submissions canvassed by the learned Counsel for the parties. In the academic year 2015-2016, two posts had become vacant with the petitioners. The petitioners appointed two teachers as Shikshan Sevaks from 27.10.2015. Thereafter, on 22.11.2016, respondent no.2 – Education Officer directed the petitioners to absorb one surplus teacher. It appears that for more than one year, no steps were taken by respondent no.2 – Education Officer. It

is submitted that even the petitioners, after retirement of the two teachers, had applied to respondent no.2 – Education Officer and thereafter, by an advertisement and after following the procedure, appointed two Shikshan Sevaks.

6. In our view, respondent no.2 – Education Officer could have directed the petitioners to absorb the surplus teacher at the relevant time only i.e. when the advertisement was sought to be issued and when the petitioners had applied with respondent no.2 seeking permission to issue the advertisement. However, it appears that no steps were taken by respondent no.2 – Education Officer at the relevant time and thereafter, the advertisement was issued and appointments of two Shikshan Sevaks were made by the petitioners. It appears that after a lapse of one year, the impugned communications are issued by respondent no.2.

7. Considering the aforesaid aspect of the matter and to adjust the equities, we pass the following order :-

(i) The impugned communications issue by respondent no.2 are quashed and set aside.

(ii) Respondent no.2 – Education officer shall consider the proposal forwarded by the petitioners – Institution seeking approval to the appointments of the teachers, on its own merits and in accordance with the provisions of law, however, shall not reject the same on the ground that surplus teacher was not absorbed by the petitioners.

(iii) As and when vacancy will arise with the petitioners – Institution, the same shall be intimated to the Education Officer and the petitioners shall fill-in the vacancy by absorbing surplus teacher as may be directed by the Education Officer.

(iv) With these directions, the Writ Petition is disposed of. No cost.

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

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