

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

WRIT PETITION NO. 241 OF 2017

**AMIT MANIKRAO WAKADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**AND
WRIT PETITION NO. 243 OF 2017**

**SATYABHAMA PRALHADRAO NAGIME
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr.T.M.Venjane, Advocate for petitioner
Mr.S.B.Yawalkar, AGP for respondent nos.1 and 2
Mr.P.D.Suryawanshi, Advocate for respondent no.3

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**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATE : APRIL 07, 2017**

ORAL ORDER :

Heard.

2. Mr.Venjane, learned Counsel for the petitioners submits that the petitioners were appointed by the respondent – Institution from O.B.C. category as Shikshan Sevaks for Maths subject. The appointment orders were issued to

them on 24.06.2013. The proposal seeking approval to the appointments of the petitioners was forwarded to the Education Officer and the same has been rejected only on the ground that at the relevant time, there was ban on recruitment.

3. The learned Counsel for the petitioners submits that so far as Maths subject is concerned, ban on recruitment would not apply in view of the Government Resolution dated 04.09.2013. The learned Counsel submits that even for filling the backlog, the ban does not apply.

4. The learned Counsel for respondent no.3 – Institution supports the case of the petitioners.

5. The learned AGP submits that ban on recruitment was applying to all the posts of Shikshan Sevaks. The exception is that if there is no surplus candidates available for Maths subject, the Institution can appoint teachers by issuing advertisement and following the due procedure. The

AGP further submits that there are 190 surplus teachers available for absorption. Even, the procedure under Section 5(1) of the M.E.P.S. Act was not followed by the Institution while appointing the petitioners.

6. We have considered the submissions advanced by the learned Counsel for the parties.

7. The proposal seeking approval to the appointments of the petitioners as Shikshan Sevaks has been rejected basically on the ground that at the relevant time, in view of the Government Resolutions dated 06.02.2012 and 30.06.2014, there was ban on recruitment. According to the petitioners, the Institution had submitted the application dated 14.05.2013 to the Education Officer for permission to issue advertisement to fill-in the said posts. However, as no response was received from the Education Officer, advertisement was issued for the said posts and

after following the due selection process, the petitioners were appointed on 24.06.2013.

8. There is nothing on record to show that the Education Officer had directed the Institution to absorb any surplus teacher for Maths subject prior to the appointment of the petitioners or even subsequent thereto. Even the affidavit-in-reply filed by respondent no.2 does not state that the Education Officer had directed the Institution to absorb surplus teacher. It appears that though the Institution had submitted the application for permission to issue the advertisement for the said posts, no response was received from the Education Officer. Of course, it will be for the Education Officer to consider that proper procedure was adhered to while appointing the petitioners i.e. to see that advertisement was issued and proper selection process was followed or not so also the applicability of the roster and availability of the posts.

9. In the light of the above, the impugned order passed by respondent no.2 - Education Officer is quashed and set aside. Respondent no.2 - Education Officer shall decide the proposal submitted by the Institution seeking approval to the appointments of the petitioners afresh on its own merits and in accordance with law, expeditiously and preferably within a period of six months from today. The Education Officer shall not reject the proposal on the grounds on which the impugned order was passed.

10. Till the proposal is decided by the Education Officer afresh, no adverse action shall be taken against the petitioners on the ground that the proposal is pending.

11. With these directions, the both the Writ Petitions stand disposed of. No costs.

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

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