

Jsn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 8587 OF 2016
WITH
CONNECTED WRIT PETITIONS**

**4322 of 2017, 4334 of 2017, 7643 of 2014, 9436 of 2015,
9443 of 2015, 9284 of 2016, 4323 of 2017, 4499 of 2016,
9440 of 2015, 9873 of 2015, 9285 of 2016, 4324 of 2017,
6181 of 2017, 9442 of 2015, 10285 of 2015, 11070 of 2016,
11081 of 2016, 2772 of 2017, 3047 of 2017, 3048 of 2017,
3049 of 2017, 3050 of 2017 & 3051 of 2017 & 10578 of
2015.**

Smt. Munoli Rajashri Karabasappa ...Petitioner
Versus
State of Maharashtra Thru Secretary & ...Respondents
Ors.

Mr S.A. Rajeshirke, *Adv for the Petitioners in WP No. 8587 of 2016, 9284 of 2016 & 9285 of 2016.*

Mr N.V. Bandiwadekar, *Adv for Petitioners in WP NO. 9436 of 2015, 9440 of 2015, 9442 of 2015, 9443 of 2015 and i/b Mr. Sagar A Mane, Adv for Petitioner in WP No. 4322 of 2017, 4323 of 2017, 4324 of 2017, 4334 of 2017, 4499 of 2016, 7643 of 17, 9873 of 2015, 10286 of 2015, & also i/b Mr Mandar G. Bagkar Adv for Petitioners in Wp no. 6181 of 2017 & 10578 of 2015.*

Mr. Ajay Joshi, *Adv for the Petitioners in above 2772 of 2017, 3047 of 2017, 3048 of 2017, 3049 of 2017, 3050*

of 2017 & 3051 of 2017.

Mr. C.P. Yadav, AGP for Respondents Nos. 1 to 3 in 2772 of 2017, 3047 of 2017, 3048 of 2017, 3049 of 2017, 3050 of 2017 & 3051 of 2017.

Mr. Lalasaheb Bandal, Adv. for Respondents Nos. 4 & 5 in 2772 of 2017, 3047 of 2017, 3048 of 2017, 3049 of 2017, 3050 of 2017 & 3051 of 2017.

Ms. Manisha Devkar, Adv h/f. Mr. S.M. Katkar, Adv. for Petitioners in 11070 of 2016, 11081 of 2016

Mr. C.P. Yadav, AGP for Respondents Nos. 1 and 2 in 11070 of 2016, 11081 of 2016.

Mr Bhupesh V. Samant, AGP for Respondents Nos. 1 and 2 in above Writ Petitions.

**CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**
DATED: 10th July 2017

PC:-

1. Rule. Rule made returnable forthwith. Heard by consent.

2. By way of above bunch of Petitions, some of the Petitioners who are teachers and some of whom are Managements have approached this Court on account of the action of Respondent – Education Officer of refusing to grant approval to the appointment of the teachers. The approval is either rejected or the Petitioners have not been granted approval on the ground that, in view of the Government

Resolution dated 2nd May 2012, there was a ban on recruitment of teachers and as such appointments made by the management are illegal.

3. Mr. Samant, learned AGP vehemently opposes the Petitions. He submits that the Respondent – Management were aware that the ban is imposed with a view to accommodate surplus teachers. He submits that if the Petitions are allowed, the State would have to pay salaries of teachers who are surplus and also the teachers like the Petitioners who are appointed in contravention of the Government Resolution dated 2nd May 2012.

4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects of English, Maths and Science are concerned.

5. The Division Bench of this Court in the cases of ***Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr.***¹ has also taken a view that ban would not be applicable wherein the appointments are made so as to fulfil the backlog of backward class candidates.

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three

1 Writ Petition No. 10580 of 2015 with 1145 of 2016 decided on 9th March 2017.

categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfil the backlog of reserved category candidates.

8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the State exchequer will be burdened.

9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents – Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-

- (a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;
- (b) where the appointments made for filling up vacancies in English, Mathematics and Science;
- (c) where the recruitment is made to fulfil the backlog of reserve categories candidates;

10. The necessary orders after hearing the management and teachers be passed within a period of six weeks from today.

11. Needless to state that upon grant of approval necessary steps would be taken for paying salary to such of

the teachers who are found eligible and salaries would be paid to them within a period of 12 weeks from today.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)