

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

WRIT PETITION NO.9715 OF 2016

Shri. Niraj Rajaram Dhukate and another	..Petitioners
Versus	
The State of Maharashtra and another	..Respondents

**Mr. N. V. Bandiwadekar i/by Mr. S. A. Mane, Advocate for the
Petitioners.**

Mr. C. P. Yadav, AGP for Respondent Nos.1 and 2.

**CORAM : B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE : 18th DECEMBER, 2017**

PC.

- 1] Rule. Rule made returnable forthwith. Heard by consent.
- 2] The Petitioners have approached this Court being aggrieved by the order passed by the Respondent No.2 – Education Officer dated 30th June 2016, thereby rejecting the proposal filed by the Petitioners for grant of approval to the appointment of the Petitioner No.1.
- 3] This is a second round of litigation.
- 4] The facts giving rise to the present Petition are as under :-

The Petitioner No.2 applied to the Respondent No.2 –

Education Officer for grant of permission to issue advertisement for filling of certain posts. The posts concerned were of drawing teachers. Since earlier drawing teacher had retired on account of superannuation the post remained vacant. Though an application was made by the Petitioner No.2, since there was no response from the Education Officer, Petitioner No.2 published an advertisement on 22th July 2010. When the selection committee conducted interviews, the Petitioner No.1 was successful and came to be appointed vide order dated 30th July 2010. Accordingly, the proposal was submitted to the Respondent No.2 – Education Officer. He rejected the proposal vide order dated 18th January 2014 on four grounds; (i) Permission was not taken for advertisement (ii) The change report with regard to the elections to the trust are pending before the Assistant Charity Commissioner (iii) The proposal was submitted belatedly and (iv) The reservation criteria was not followed.

5] Being aggrieved thereby, the Petitioner No.1 approached this Court. This Court vide judgment and order dated 29th April 2016 allowed the Petition. This Court has specifically observed that in the year 2010 there was no requirement for seeking prior permission. However, this Court has specifically observed that an application for grant of permission in fact was made on 15th May 2010. In so far as the pendency of change report before the Assistant Charity Commissioner is concerned, the Court

found that the said ground was not relevant for considering the matter. In so far as the third ground is concerned, the Court found that on account of delay caused by the management, teacher cannot be made to suffer. The fourth ground was also rejected by this Court by observing that the Petitioner belongs to NT(C) and as per rule 9(9)(a) of the MEPS Rules, the reserved category seats are interchangeable and the Education Officer could have examined that aspect of the matter. As such the impugned order before the Court was set aside and the matter remitted back to the Respondent No.2 – Education Officer.

6] On remand, the Respondent No.2 – Education Officer has rejected the proposal on the ground that as per the staffing pattern of 2015-2016, the post on which the Petitioner was appointed has become surplus and as such approval cannot be granted. Firstly, the authority has not considered in any manner the observations made by the Division Bench of this Court in Writ Petition No.8929 of 2014. In any case, the ground that the post became surplus as per the staffing pattern 2015-2016 is concerned would not be available to the Respondent authority. The Division Bench of this Court in Writ Petition No.9026 of 2014 decided on 15th December 2015 between Sindhudurg Zilla Shikshan Sanstha Chalak Mandal Vs. Union of India and others has held that the appointments made prior to the staffing pattern being implemented as

per the Right to Education Act, shall not be disturbed.

7] However in the facts and circumstances of the case, we find that there is no justification as to why the Respondent – management did not submit the proposal for grant of approval. In that view of the matter, we find that the impugned order is not sustainable in law. Rule is made absolute in the following terms :-

- I) Though Petitioner No.1 shall be treated as appointed from 2nd August 2010, in so far as salary to be paid to Petitioner No.1 would be payable only from 18th January 2014 i.e. the date on which Respondent No.2 submitted the proposal.
- II) In so far as payment of salary from the public exchequer is concerned, the Petitioner No.1 shall be treated to have been appointed as Shikshan Sevak from 18th January 2014. Upon completion of three years i.e. on 18th January 2017, the Petitioner No.1 would be entitled to be treated as Assistant Teacher in the regular scale.
- III) The arrears to be paid to the Petitioner No.1 within a

period of six months from today.

IV) We further clarify that in so far as salary for the period between 2nd August 2010 to 17th January 2014 is concerned, Petitioner No.1 would always be at liberty to take steps as are permissible in law for recovering such dues from the Respondent No.2 – Education Officer.

V) If the Respondent No.2 – Education Officer finds that the Petitioner's services are now surplus in the Petitioner No.2 school, needless to state that the Respondent No.2 – Education Officer shall act in accordance with the directions given by the Division Bench of this Court in Writ Petition No.9026 of 2014.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]