

*Ladda (PS).*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9703 of 2017.

Sanjeevani Subhash Swami .. ..Petitioner.  
Vs  
The State of Maharashtra & Ors .. ..Respondents.

**ALONG WITH**  
WRIT PETITION No. 9688 of 2017

Satyajit Sarjerao Gurav .. ..Petitioner.  
Vs  
The State of Maharashtra & Ors .. ..Respondents.

Mr. Chetan G. Patil, Advocate for petitioners in both matters.  
Mr. A.P. Vanarase, A.G.P. for Respondent No. 1 and 2 in both matters.

CORAM : ANOOP V. MOHTA AND  
SMT. BHARATI H.DANGRE, JJ.  
DATE : 8<sup>th</sup> September, 2017

**FINAL ORDER :-**

1) These two writ petitions are circulated today for recalling of order passed on 28<sup>th</sup> August, 2017 in the backdrop of the facts involved in the matter. It appears that the above writ petitions were to be disposed of in the light of order passed by this Bench in Writ Petition No. 5328 of 2017 along with connected writ petitions

decided on 16<sup>th</sup> August, 2017. Since identical issues are involved in several writ petitions all such writ petitions are being listed before us frequently.

2) On hearing the above two writ petitions on 28<sup>th</sup> August, 2017 the concerned P.S./P.A. was asked to reproduce the order passed on 16<sup>th</sup> August, 2017 in Writ Petition No. 5328 of 2017 along with connected matters. However, inadvertently a different order in another group of writ petitions came to be reproduced. Hence, by consent, we recall order dated 28<sup>th</sup> August, 2017 and pass a fresh order which is as follows :-

1) Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

2) In the above two petitions, the petitioners have challenged the order/communication of the Education Officer, thereby refusing approval to the appointment of the petitioners. The grievance of the petitioners in the above writ petitions is that they were appointed as Shikshan Sevaks after following due procedure and on ascertainment of their qualifications and the appointments were for a period of three years on

monthly fixed salary. Thereafter, the petitioners proposals were forwarded to the Education Officer for grant of approval along with necessary documents. The proposals for approval were pending for considerable time with the Education Officer who ultimately rejected the approval in view of the Government Resolution dated 2<sup>nd</sup> May, 2012 by which the State had imposed a ban on recruitment of teachers and as such appointment made by the Management were termed as illegal. By the said Government Resolution, the State has imposed a ban on the post of recruitment of assistant teachers until such time of hundred per cent absorption of surplus teachers. However, subsequently on 4<sup>th</sup> September, 2013 the ban has been relaxed by the State Government in relation to subject of English, Mathematics and Science.

3) The petitioners have challenged the rejection and/or refusal of approval on the said ground contending that they were qualified for the post of Shikshan Sevaks and the approval has been refused only

on the ground that the appointments have been made after issuance of Government Resolution dated 2<sup>nd</sup> May, 2012. Similar issue was raised before this Hon'ble Court in a bunch of connected writ petitions were dealt with by a Division Bench of this Court (Coram: B.R.Gavai & Riyaz I. Chagla, JJ) on 10<sup>th</sup> July, 2017 was pleased to allow the writ petition and has quashed and set aside the impugned order after referring the judgment and order passed in Writ Petition No. 10580 of 2015 with W.P. No. 1145 of 2016 decided on 9<sup>th</sup> March, 2017. The paragraphs 6, 7 and 8 of the said judgment are reproduced below for ready reference :-

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 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 fulfill 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.

4) In the result, the said Division Bench was pleased to quash and set aside the impugned order and directed to the Respondents – Education Officers 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;

5) The said Division Bench also observed that upon grant of approval necessary steps would be taken for paying salary to such teachers who are found eligible and salaries would be paid to them within a period of 12 weeks from the date of the order.

6) It was also directed that necessary orders after hearing the management and teachers be passed within a period of six weeks from 8<sup>th</sup> September, 2017.

7) The issue involved in the present writ petitions is clearly governed by the order passed by this Court (Coram: B.R.Gavai & Riyaz I. Chagla, JJ) in Writ Petition No. 8587 of 2016 decided on 10<sup>th</sup> July, 2017. Hence, the following order:-

**ORDER.**

1) The above Writ Petitions are allowed and impugned orders are quashed and set aside. The respondents-Education

officers are directed to decide the case of the petitioners by affording opportunity of hearing to the Management and the Petitioners within a period of six weeks and the Education Officer who will examine as to whether the recruitment process is commenced prior to GR dated 2<sup>nd</sup> May, 2012 and whether the appointments were made for filling up vacancies in English, Mathematics and Science and also whether the recruitment is made to fulfill the backlog of reserved categories candidates.

2) Upon grant of approval necessary steps would be taken for payment of salary to the petitioners who are found eligible and the salary would be paid within a period of 12 weeks from the date of this order. All the concerned to act on an authenticated copy of this order.

**(SMT. BHARATI H. DANGRE, J)**

**(ANOOP V. MOHTA, J)**