

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

915 WRIT PETITION NO.547 OF 2018

KIRANKUMAR UTTAMRAO METALWAD ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. V. S. Panpatte, Advocate for the Petitioner.

Mr. V. S. Badakh, AGP for Respondent-State.

Mr. V. G. Kodale h/f Mr. V. D. Gunale, Advocate for the Respondent Nos.4 and 5.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 11th DECEMBER, 2018.

PER COURT:-

1. Mr. Panpatte, learned counsel for the petitioner submits that upon vacancy being created on retirement of senior teachers, the institution applied to the Education Officer seeking permission to fill in the post on 20.06.2013 and 22.07.2013. The Education Officer did not respond. Thereafter, the advertisement was issued on 10.08.2013. After following due selection process, the petitioner was appointed under appointment order dated 25.09.2013.

2. The learned counsel further submits that at the time when the petitioner was appointed, the ban on recruitment was relaxed to the extent of Scheduled Caste/Scheduled Tribe candidates. The

petitioner is appointed from Scheduled Tribe category. The learned counsel submits that the petitioner also has validity certificate with him. The proposal forwarded by the institution seeking approval to the appointment of the petitioner is rejected solely on the ground that there is a ban on recruitment and violation of proviso to section 5(1) of the M.E.P.S. Act, so also the availability of the surplus teachers. The learned counsel submits that the ban on recruitment does not apply to the SC/ST candidates and relies on the orders passed by the High Court at its Principal Seat at Bombay in Writ Petition No.8587 of 2016 with connected writ petitions dated 10.07.2017.

3. The learned A.G.P. submits that the selection process had commenced prior to the ban on recruitment of SC/ST candidates was lifted. The learned A.G.P. further submits that there are large number of surplus candidates to be absorbed.

4. We had specifically asked the learned A.G.P. whether the Education Officer had sent surplus candidates from Scheduled Tribe category to the respondent-Institution for absorption all these years. The learned A.G.P. replied in a negative. It also appears and it is not denied by the Education Officer that the institution had applied seeking permission to the Education Officer for filling in the vacant post on 20.06.2013 and 22.07.2013. The Education Officer did not respond

and thereafter, issuing advertisement and inviting applications, the petitioner is appointed from Scheduled Tribe category. It is also not disputed that the backlog of reserve category candidate are allowed to be filled in as per the Government Resolution dated 31.03.2013.

5. This Court at its Principal Seat at Bombay in Writ Petition No.8587 of 2016 dated 10.07.2017 has observed thus:

"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 governed 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 be applicable to three 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.

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 fulfill the backlog of reserve categories candidates;"

6. In light of the above, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the appointment of petitioner on its own merits, considering all the relevant aspects of the matter. However, shall not reject it on the ground the

impugned order is passed. The same shall be decided expeditiously and preferably within a period of four (04) months.

7. Writ Petition accordingly disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/December-18