

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

WRIT PETITION NO. 3872 OF 2017

Nitin Vijay Thorat

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Amol N. Kakade, Advocate for the Petitioner.

Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 1 and 2.

Shri P. V. Barde, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 22ND FEBRUARY, 2018.

FINAL ORDER :

. The proposal seeking approval to the appointment of the petitioner is rejected basically on the ground that there were surplus candidates and surplus candidates are not absorbed.

2. Heard the learned counsel for the respective parties and the learned Assistant Government Pleader for respondent/State.

3. The petitioner was appointed pursuant to the liberty granted by this Court to the institution to fill in the post of Assistant Teacher in Geography subject, subject to the decision in Writ Petition No. 5348 of 2003. Thereafter, the institution has

taken up the selection process. The petitioner is appointed from open category for geography subject. It is stated that, the Writ Petition No. 5348 of 2003 is dismissed under judgment and order dated 20th December, 2017. As such, claim of the petitioner in the said writ petition would not survive. The petitioner had earlier filed writ petition against the order rejecting the proposal for approval bearing Writ Petition No. 11205 of 2015. This Court under judgment and order dated 15.11.2016 had set aside the order rejecting proposal seeking approval to the appointment of the petitioner. Earlier the proposal was rejected on the ground that vacancy is for the person from other categories and not for general category. The appointment of the petitioner was during the ban period and the roster was not verified.

4. All these grounds were set aside by this Court under its judgment and order dated 15.11.2016 in Writ Petition No. 11205 of 2015. Now the proposal is rejected on the ground that there were surplus candidates available.

5. While allowing Writ Petition No. 11205 of 2015, we had directed the respondents to consider the proposal seeking approval to the appointment of the petitioner in the light of the order passed in Writ Petition No. 5348 of 2003 whereby permission was granted to the management to fill in the post by issuing advertisement. The Education Officer oblivious of the

said order has passed the impugned order rejecting the proposal on the ground of surplus candidates being available.

6. Considering the above, the impugned order is quashed and set aside. The Education Officer shall decide the proposal afresh within a period of three (03) months from today and shall not reject it on the ground that there were surplus candidates available and that Sec. 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act was not followed or post was meant for some different category. The writ petition is accordingly allowed. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]