

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

**WRIT PETITION NO. 4025 OF 2017**

Mahesh Suresh Dinde and others .. Petitioners

**Versus**

The State of Maharashtra and others .. Respondents

Shri S. T. Shelke, Advocates for Petitioners.

Shri K. N. Lokhande, A.G.P. for Respondent Nos. 1 to 3.

Shri S. S. Wagh, Advocate for the Respondent No. 4.

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

**DATE : 14TH FEBRUARY, 2018.**

**FINAL ORDER :**

. The proposal seeking approval to the appointments of petitioners as Shikshan Sevaks is rejected. Aggrieved thereby present petition.

2. Mr. Shelke, the learned advocate for petitioners submits that, the posts for English, Maths and Marathi subjects had become vacant. The institution applied to the Education Officer seeking permission to fill in the posts on 29.04.2014. The Education Officer did not respond. Thereafter, the institution published an advertisement inviting applications for filling in the posts. Pursuant to the advertisement, the petitioners applied

and were selected and appointed after following due selection process. The Education Officer never directed the institution to absorb surplus candidates for all these years. The learned counsel submits that, the petitioners had sought information under the Right to Information Act from the Education Department about number of surplus teachers in the district. It is replied that there are 351 vacant posts and there are only two surplus teachers and they are also absorbed.

3. The learned Assistant Government Pleader for respondent Nos. 1 to 3 submits that, the appointments of petitioners are during the ban period. The Education Officer had never given permission to the institution to fill in the posts. The provisions of Sec. 5 of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Act is not followed. The order is rightly passed by the Education Officer.

4. We have considered the submissions canvassed by learned counsel for respective parties.

5. In the affidavit, the Education Officer accepts that, it had received an application from the institution seeking permission to fill in the posts. The Education Officer did not respond to the application filed by the institution. He did not communicate the rejection of the application, nor granted permission. It is not

disputed that, the posts were vacant. Two of the petitioners were appointed after one year of the application being given and one petitioner is appointed after three months. Till the petitioners were appointed, the Education Officer never directed the institution to absorb the surplus candidates. The posts could not have been kept vacant for such a long period. It was inaction on the part of the Education Officer in not forwarding the surplus teachers for absorption in the respondent No. 4/institution. The institution had applied to the Education Officer seeking permission to fill in the posts, but the Education Officer sat over that application and did not respond.

6. Considering the aforesaid conspectus, the impugned order is quashed and set aside. The Education Officer shall decide the proposal filed by petitioners afresh and shall not reject it on the ground on which the impugned order is passed. The said proposal shall be decided expeditiously and preferably within a period of four (04) months from today. The writ petition is disposed of. No costs.

**[A. M. DHAVAL, J.]**

**[S. V. GANGAPURWALA, J.]**