

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4193 OF 2017

Atul Sudhakar Lohakare	.. <u>Petitioner</u>
Versus	
The State of Maharashtra and others	.. <u>Respondents</u>

Shri V. S. Panpatte, Advocate for the Petitioner.
Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 1 and 2.
Shri U. B. Bondar, Advocate for Respondent No. 3.
Shri Irfan D. Maniyar, Advocate for Respondent Nos. 4 and 5.

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

DATE : 8th February, 2018

PER COURT :

1. The proposal seeking approval to the appointment of the petitioner is rejected on the ground that Section 5 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to 'MEPS Act'), has not been followed and there are surplus candidates to be absorbed. The counsel for the petitioner submits that on 13.7.2015 application was given by the management to the Education Officer to send surplus teacher as one post had become vacant. Thereafter reminder was issued on 1.12.2015. On 2.12.2015 letter was given to the Deputy Director of Education in that regard. On 14.12.2015 the Deputy Director of

Education issued letter to the Education Officer to take decision upon the application of the petitioner. On 18.12.2015 reminder was given, however, no action was taken by the Education Officer. On 1.3.2016, the petitioner was appointed for a temporary period of three months. Still the Education officer had not taken any steps of sending the surplus candidates. Eventually, on 12.5.2016, advertisement is issued by the management and after following due selection process, the petitioner was selected and appointed on 15.6.2016 from open category. According to the learned counsel, the procedure under Section 5 of the MEPS Act has been followed.

2. Learned counsel for the Education Officer submits that at the relevant time there was ban on recruitment and as per roster the post would go to the person from scheduled tribe category. The procedure has not been followed. There are 149 Assistant teachers available in the surplus list. The same are required to be accommodated. The order is correctly passed.

3. The dates as narrated above would show that the application was given by the Institution to the Education Officer and the Deputy Director of Education to send surplus candidates. However, the respondents did not take any steps to send the surplus candidates and eventually advertisement was issued almost ten months after giving application to the Education Officer for filling in the post and the petitioner was appointed

pursuant to the advertisement issued and the selection process.

4. In view of that, it would be seen that Section 5 of the MEPS Act has been followed. It is the Education Officer who did not take the steps to send the surplus candidates till the appointment of the petitioner.

5. In the light of above, the impugned order is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner afresh, on its own merits, in accordance with law and shall not reject it on the ground on which the impugned order is passed.

6. The writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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