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

WRIT PETITION NO.4543 OF 2017

Shashank s/o Shivajirao Chimanshette,
Age: 29 years, Occu: Service,
As an Assistant Teacher,
R/o Ujed, Tq. Shirur-Anantpal,
Dist. Latur ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer
(Secondary), Zilla Parishad,
Latur, Dist. Latur
3. Sambhaji Shikshan Prasarak
Mandal, Theregaon,
Tq. Shirur-Anantpal,
Dist. Latur,
Through its Secretary
4. Shri. Premnath Vidyalaya,
Thergaon, Tq. Shirur-Anantpal,
Dist. Latur,
Through its Headmaster ..RESPONDENTS

Mr Vikas G. Kodale, Advocate h/f Mr V.D. Gunale,
Advocate for petitioner;
Mr S.M. Ganachari, A.G.P. for respondent Nos.1 & 2

**CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.**

DATE : 4th SEPTEMBER, 2018

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ORAL ORDER :

Heard learned Counsel appearing for the petitioner and learned A.G.P. for State authorities.

2. The petitioner is challenging the order passed by the Education Officer (Secondary), Zilla Parishad, Latur on 29th March, 2017. Learned Counsel appearing for the petitioner, by inviting our attention to the order passed by the Division Bench of this Court in Writ Petition No. 245 of 2017 submitted that in the first round of litigation, the petition was disposed of by issuing directions to the Education Officer (Secondary) to decide the proposal within stipulated period. He invited our attention to the documents placed on record.

3. Learned Counsel appearing for the petitioner further submitted that the petitioner was possessing requisite academic qualification. He then invited our attention to the communication

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dated 18th September, 2013 forwarded to the Education Officer (Secondary), Zilla Parishad requesting him to grant permission to publish an advertisement to fill up the post of Assistant Teacher for English subject. Perusal of the communication shows that the post was falling vacant in view of retirement of earlier teacher Shivnag Nagnath Rachappa. Then again reminder is forwarded to the Education Officer on 4th December, 2013. The Education Officer is apprised of the fact namely retirement of Shivnag Nagnath Rachappa. Copy of the roster was also annexed to the communication as well as inspection report of approval of staffing pattern and it is further stated in the communication that in spite of earlier communication dated 19th September, 2013 no permission is received. As such, second proposal is submitted to the Education Officer seeking his approval.

4. Learned Counsel appearing for the petitioner then submitted that even to the second

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proposal, there was no response from the Education Officer, as such, advertisement was published in the newspaper calling upon the candidates to appear for interview scheduled on 27th September, 2013. He then submitted that there was as many as nine candidates who have stake their claim and the petitioner was appointed assessing his merit. The appointment was also approved in the resolution passed in the meeting dated 29th November, 2013. He then invited our attention to the order passed by this Court in Writ Petition No. 3945 of 2017, dated 20th August, 2018. Thus, it is submission of learned Counsel that the order passed by the Education Officer (Secondary) impugned in the petition is clearly unsustainable.

5. It is not in dispute that the petitioner was appointed to the post of Assistant Teacher for teaching English subject and the institute time and again approached the Education Officer seeking his approval for filling the post with all necessary and requisite documents. At no point of time, the

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Education Officer raised any objection. The proposal forwarded by the institute stating that there are already surplus teachers available and the institute may accommodate such surplus teachers in their school. The Education Officer was keeping mum for a considerable period and then suddenly in the order dated 29th March, 2017 arrived at a conclusion that as there are many surplus teachers available and till all these surplus teachers are accommodated and absorbed in some other school, no approval can be granted to the appointment of the petitioner. The Education Officer also referred to certain orders passed at Bench of this Court at Nagpur in Writ Petition Nos.6606 of 2015, 6067 of 2015 and 156 of 2016.

6. Interestingly enough, the first ground of absorption of the surplus teachers is already dealt with by the Division Bench of this Court at Principal Seat in the judgment in Writ Petition No.8587 of 2016 and the judgment is of dated 9th December,2017. The Division Bench has taken into

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consideration the ground raised of availability of surplus teachers. The Division Bench referred to three categories in the order dated 20th August, 2018. We have referred to the judgment in detail, as well as the categories namely A, B and C carved out in the judgment of the Division Bench. The case of the petitioner falls under category B and C namely there was a post available for subject English and petitioner admits that he was selected from open category. Even the order impugned in the petition is not on the ground that the petitioner was occupying the post from candidate of open category but it only relates to the objection of availability of surplus teachers. When the Division Bench of this Court at Principal Seat had the occasion to consider all the aspects and when the order is passed by the Principal Seat on 9th March, 2017 and followed in other judgments at Principal Seat as well as Benches, the Education Officer ought not to have referred to some earlier orders passed in the year 2015 or 2016 and ought not to have rejected the proposal for approval by

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order dated 29th March, 2017.

7. Considering all the above referred aspects, we are of the opinion that learned Counsel appearing for the petitioner made out a case. The order impugned in the petition is clearly unsustainable. Resultantly, the petition is allowed in terms of prayer clauses (c) and (D).

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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