

(1)

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

WRIT PETITION NO.5123 OF 2017

Arvind s/o Chandrakant Jadhav,
Age: 32 years, Occ: Service as
Shikshan Sevak, R/o. At Post
Talani, Tq. Biloli,
Dist. Nanded.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,
Department of School Education,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Division Latur, At Latur,
Tq. & Dist. Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Nanded.
4. The President/Secretary,
Phule Samaj Sudharak Samiti
Mukhed, Mukhed, Tq. Mukhed,
Dist. Nanded.
5. The Head Master,
Shahir Annabhau Sathe
Secondary and Higher
Secondary Vidyalaya, Mukhed,
Tq. Mukhed, Dist. Nanded.

..RESPONDENTS

Mr V.S. Panpatte, Advocate for petitioner;
Smt G.L. Deshpande, A.G.P. for respondent Nos. 1 to
3;
Mr B.T. Bodkhe, Advocate for respondent No.3;
Mr I.D. Maniyar, Advocate for respondent Nos.4 & 5

(2)

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 12th DECEMBER, 2018

ORAL JUDGMENT : [PER : PRASANNA B. VARALE, J.]

Rule. Rule made returnable forthwith. With consent of the parties, the petition is taken for final disposal at admission stage.

2. Heard Mr. Panpatte, learned Counsel appearing for the petitioner.

3. The petitioner, by way of present petition, challenges the order dated 28th February, 2017 thereby rejecting the proposal submitted to the Education Officer (Secondary), Zilla Parishad, Nanded seeking approval to his appointment.

4. By inviting our attention to the documents placed on record, Mr. Panpatte, learned Counsel appearing for the petitioner submitted that in response to the advertisement published in

(3)

newspaper dated 12th December, 2013, the petitioner has claimed for the appointment to the post of teachers. On 29th November, 2013, respondent No.5 requested the Education Officer (Secondary), Zilla Parishad, Nanded for grant of permission to issue advertisement. The petitioner was possessing requisite qualification, namely, B.Sc. B.Ed. and he was appointed on 1st January, 2014. The petitioner has completed his tenure for three years.

5. It is then submitted by Mr. Panpatte, learned Counsel that immediately after appointment, proposal was submitted to the Education Officer (Secondary), Zilla Parishad, Nanded, on 13th March, 2014. All the necessary facts were brought to the notice of the Education Officer, as such, the post which was falling vacant due to retirement of earlier employee Mr. V.L. Sagar. It also refers to the appointment of the petitioner, as well as the educational qualifications of the petitioner. A reminder was then submitted to the Education Officer on 28th January, 2016. Along with reminder,

(4)

the proposal was resubmitted.

6. Mr. Panpatte, learned Counsel submitted that after getting the proposal pending nearly for three years, the Education Officer assigned untenable reasons and rejected the proposal. He then submitted that the ground raised in rejection is of non absorption of the surplus teachers. It is also submitted by him that from the date of submitting the proposal till decision of the proposal, there was not a single communication to the institute informing the institute the name of the surplus teachers and then further direction to the institute to absorb surplus teachers. In year 2017, petitioner school was informed about the availability of surplus teacher, namely, Mr. Shivaji Shankarrao Pandagale and in response to the communication, by way of on-line procedure, the respondent-institute absorbed such surplus teacher. As such, the submission of Counsel is, whenever such an intimation was received by the institute for absorption of surplus teacher, the institute

(5)

immediately gave positive response to the communication and reason assigned in rejection is after thought.

7. Learned Counsel for the petitioner submitted that the petitioner was protected by interim order dated 18th April, 2017. Learned Counsel also relied upon the judgment of this Court in judgment decided at the Principal Seat in ***Writ Petition No.8587 of 2016 (Smt. Munoli Rajashri Karabasappa vs State of Maharashtra through Secretary and others)*** with other connected matters, decided on 10th July, 2017 (Coram: B.R. Gawai and Riyaz I. Chagla, JJ.) to submit that the case of the petitioner would fall in the category (b) for teaching Science subject.

8. Smt. Deshpande, learned A.G.P., while opposing the petition relied on the affidavit in reply filed on behalf of the Education Officer (Secondary), Zilla Parishad, Nanded. The reply only re-iterates the reference to the orders passed by

(6)

learned Single Judge of this Court. Now, these orders passed by learned Single Judge were on a public issue, namely failure of the Government to take necessary steps immediately to fill up the posts of teachers. The ground raised in affidavit in reply is of non absorption of the teachers.

9. There was considerable merits in the submission of Mr. Panpatte, learned Counsel that from the date of submitting proposal till decision in the year 2017, there was no communication forwarded to the institute for absorption of surplus teachers. Mr. Panpatte, learned Counsel was also justified in submitting that in view of fact situation of the present petition, the petitioner would fall in category (b) of the above referred judgment delivered at Principal Seat.

10. Considering the aforesaid grounds, we are of the opinion that learned Counsel appearing for the petitioner made out a case. Accordingly, the writ petition is allowed in terms of prayer clauses

(7)

(b) and (c).

11. Rule is made absolute in above terms.

(MANGESH S. PATIL)
JUDGE

(PRASANNA B. VARALE)
JUDGE

Tupe