

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

95 WRIT PETITION NO. 5647 OF 2017

BALU NANASAHEB KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Biradar R.D.
AGP for Respondents 1 and 2 : Mr. S.G.Karlekar
Advocate for Respondents 4 and 5 : Mr. Shaikh Shakil Usman

CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : JULY 23, 2018

O R D E R :

Mr. Biradar, learned counsel submits that the petitioner was appointed as Shikshan Sevak on 27.3.2012. The management submitted proposal seeking approval to the appointment of the petitioner. Same is rejected under impugned order. Learned counsel submits that the Government Resolution, dated 2.5.2012 imposing ban on recruitment would not apply to the petitioner, as the appointment of the petitioner is prior to the said Government Resolution. According to the learned counsel, the respondent Education Officer till date had

never referred any surplus teacher to be absorbed with the respondent institution.

2. Learned counsel for the respondent management has produced outward register showing that on 24.12.2013 under outward no.87 the proposal was submitted to the Education Officer seeking approval to the appointment of the petitioner.

3. Learned AGP submits that the institution on 22.3.2018 had requested the permission from the Education Officer to appoint Shikshan Sevak and on 27.3.2018 Shikshan Sevak is appointed. According to the learned AGP large number of surplus candidates are required to be absorbed. The Education Officer has rightly passed the order.

4. We have considered the submissions.

5. The appointment of the petitioner is prior to the Government Resolution, dated 2.5.2012. We had specifically asked the learned AGP as to whether the Education Officer for all these years has sent any surplus teacher to be absorbed with the respondent institution. Upon instructions, it is submitted that the Education Department has not sent any surplus teacher to the respondent institution for absorption.

6. The respondent institution could not have kept the post vacant for such a long period. We would have accepted the case of the respondent Education Department had the respondent referred surplus candidates to the institution for absorption and the institution had not absorbed the surplus teacher, but the facts are otherwise. The Education Department never referred any surplus teacher for absorption with the respondent institution. The appointment of the petitioner is also prior to the Government Resolution, dated 2.5.2012.

7. In the light above, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the appointment of the petitioner as per the rules, policy, qualification, however, shall not reject it only on the ground that there were surplus candidates to be absorbed. Same shall be decided expeditiously, preferably within four months from today.

8. Writ Petition is accordingly disposed of.
No costs.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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