

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

WRIT PETITION NO. 5777 OF 2017

Shailesh Madhukarrao Kulkarni .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. G. Kodale, Advocate h/f Shri S. G. Rudrawar, Advocate
for the Petitioner.

Shri S. B. Yawalkar, A.G.P. for Respondent Nos. 1 and 2.

Shri Satish Bhosale, Advocate h/f Shri Respondent Nos. 3 and 4.

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

DATE : 13TH AUGUST, 2018.

FINAL ORDER :

. The proposal seeking approval to the appointment of the petitioner is rejected.

2. The learned counsel for the petitioner submits that the institution had given application to the Education Officer seeking permission to fill in the post on 13.06.2013. No response was received from the Education Officer. The advertisement is issued on 23.10.2013. After following due selection process the petitioner was selected for teaching maths subject. The approval

is rejected only on the ground that there are surplus teachers available.

3. Mr. Yawalkar, the learned Additional Government Pleader submits that, there are surplus teachers to be absorbed. The appointment of the petitioner is after the Government Resolution dated 02nd May, 2012, thereby ban on recruitment is imposed. All these aspects are rightly considered.

4. The petitioner it appears is appointed to teach Maths subject. The advertisement has been issued on 23.10.2013. It also appears that, earlier on 13.06.2013, application was given by the institution seeking permission to fill in the post, however, no response is received from the Education Officer. The details given by the Education Officer are placed on record to substantiate that there were no surplus teachers to be filled in at respondent-school for Maths subject.

5. The Division Bench at its Principal Seat at Bombay in Writ Petition No. 8587 of 2016 under order dated 10th July, 2017 has observed thus :

“4. No doubt that, vide GR dated 2nd May 2012, the State has imposed a ban on recruitment of

Assistant Teacher till there is 100% absorption of the surplus teachers. However, it is to be noted that vide subsequent GR dated 4th September 2013 itself, the ban has been relaxed in so far as subjects of English, Maths and Science are concerned.

5. The Division bench of this Court in the cases of Sou. Revati Kusha Wagh & Anr. Vs. The State of Maharashtra & Anr. has also taken a view that ban would be applicable wherein the appointments are made so as to fulfill the backlog of backward class candidates.

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfill the backlog of reserved category candidates.

8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the Constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action

against its officers, on account of who's inaction the State exchequer will be burdened.

9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents - Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-

(a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;

(b) Where the appointments made for filling up vacancies in English, Mathematics and Science;

(c) Where the recruitment is made to fulfill the backlog of reserve categories candidates,"

6. The petitioner has been appointed to teach Mathematics subject. The case of the petitioner is covered with the aforesaid Judgment.

7. In the light of above, the impugned order is quashed and

set aside. The Education Officer shall re-consider the proposal seeking approval to the appointment of the petitioner afresh on its own merits, in accordance with law. The Education Officer may consider the roster, the qualification and all other relevant aspects, however, shall not reject it on the ground that the appointment is after the Government Resolution dated 2nd May, 2012. The decision shall be taken expeditiously and preferably within four (4) months.

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

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Aug. 18

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