

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

919 WRIT PETITION NO. 6058 OF 2017

**SHIVSHANKAR OMPRAKASH RACHATTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Venjane Tukaram M.
AGP for Respondents/State : Mr. S.S. Dande
Advocate for Respondents : Mr. Kale Gopal D. for R/3.

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

DATE : 24.11.2018

PC. :-

Heard the learned counsel for the petitioner. The petitioner by way of this present petition challenges the order passed by the Education Officer (Secondary), Zilla Parishad, Latur dated 20.04.2017 thereby rejecting the proposal for grant of approval to the appointment of petitioner. Facts necessary for consideration of the grievance of petitioner are summarised as follows:

The petitioner was possessing the academic qualifications of B.Sc. B.Ed. The management institution was in need of a Teacher to be appointed in the school namely Vishal Madhyamik Vidyalaya, Pragati Nagar, Latur. The documents placed on record along with the petition show that for year 2012-2013 the staff was sanctioned and the letter of the Education Officer

(Secondary), Zilla Parishad, Latur about the staffing pattern sanction is placed on record. The Secretary of the institute issued an advertisement in a local newspaper on 02.11.2011 calling upon the interested persons for the post of an Assistant Teacher possessing the requisite qualifications B.Sc.B.Ed for teaching Science subject.

In response to the advertisement, the petitioner submitted his claim and was appointed. The resolutions are also placed on record to submit that the appointment of the petitioner was approved by the management. An appointment order was issued in favour of the petitioner dated 15.11.2011 and the same is placed on record. Copy of the joining report is also placed on record. The respondent no.3 submitted a proposal to the Education Officer (Secondary), Zilla Parishad, Latur dated 08.10.2012 seeking approval from the Education Officer. No decision was taken on the proposal. Again, on 26.12.2014 the respondent no.3 submitted the second proposal, certain facts are also stated in the proposal namely due to the death of the earlier teacher Mr. Bolegave who was suffering from Cancer, the post fall vacant and by complying with the requisite formalities the petitioner was appointed. There was no decision on the proposal, as such the petitioner approached this Court by filing Writ Petition No. 12352 of 2016. Considering this very fact, the Division Bench of this Court by an order dated 20.12.2016 disposed of the Writ Petition directing the Education Officer to take a decision on the proposal

within stipulated period. The Education Officer by an order dated 24.04.2017 turned down the proposal

2. The learned counsel appearing for the petitioner submitted that the grounds assigned for rejection of the proposal are clearly unsustainable. It is submitted in the rejection order that the institute failed to absorb the excess Teachers and there are as many as 117 employees who are not yet absorbed and the institute could not have appointed the petitioner nor could have submitted the proposal for approval. The learned counsel for the petitioner was justified in submitting before us that the first proposal was submitted in the year 2012, as there was no decision, the respondent no.3 submitted second proposal in the year 2013. All the necessary facts were brought to the notice of the Education Officer namely issuance of an advertisement, in view of the vacancy falling vacant due to death of the earlier Teacher and then appointment of the petitioner who was appointed to teach Science subject having requisite qualifications but the respondent authorities and more particularly the Education Officer (Secondary), Zilla Parishad, Latur only on the ground that there is availability of 117 excess Teachers' now i.e. in the year 2017 rejected the proposal of the petitioner.

3. It was also the submission of the learned counsel for the petitioner that at no point of time the Education Officer brought to the notice

of the institute management or the respondent no.3-Headmaster that there is availability of excess Teachers' nor such a list or names of the Teachers' was provided to the institute. Then, the learned counsel for the petitioner placed heavy reliance on the judgment of the Division Bench of this Court delivered at the Principal Seat in bunch of petitions, namely, in Writ Petition No. 8587 of 2016 and other connected petitions. The learned counsel also placed reliance on the other judgment delivered at the Principal Seat on 09.03.2017 in Writ Petition No. 10580 of 2015 and other petitions to submit that these petitions were disposed of on the lines of the view taken by the Division Bench in the judgment and order dated 10.07.2017. The learned counsel was also justified to submit before us that the case of petitioner clearly falls in two categories carved out by the Division Bench namely category (a) and (b).

4. In opposition to submissions of the petitioner, Mr. Dande the learned A.G.P. though made an attempt to submit before us that the Education Officer committed no error in view of the Government Resolution dated 04.09.2013. The learned A.G.P. in support of his submission invited our attention to clause-2 of the Government Resolution dated 04.09.2013. On perusal of the Government Resolution dated 04.09.2013 and the clause on which the learned A.G.P. placed heavy reliance, we are of the clear opinion that the Government Resolution nor the clause on which the learned A.G.P. heavily placed reliance is of any help to the learned A.G.P., as the clause-2 puts

a responsibility on the Education Officer to check and verify availability of Additional Teachers and to submit such verification to his superior authorities. Now admittedly such a course is not adopted by the Education Officer at any point of time.

5. Considering all these facts, we are of the opinion that the learned counsel for the petitioner has made out a case in favour of the petitioner. The order impugned in the petitioner is clearly unsustainable. The petition deserves to be allowed and the same is accordingly allowed in terms of prayer clause-B and C.

[MANGESH S. PATIL, J.]

[PRASANNA B. VARALE, J.]