

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

**WRIT PETITION NO. 6358 OF 2017**

1. Shri Jalna Gujarathi Samaj Education Society, Jalna,  
Through its Secretary
2. C.T.M.K. Gujarathi Vidyalaya (S),  
Sarojini Naidu Road, Jalna,  
Tq. and Dist.: Jalna,  
Through its Headmaster
3. Ramesh Purushottam Gurap,  
Age: 27 Years, Occu.: Service as  
Shikshan Sevak,  
R/o.: Balaji Nagar, Jalna,  
Tq. And Dist.: Jalna
4. Nitin Subhashrao Jadhav,  
Age: 27 Years, Occu.: Service as  
Shikshan Sevak, R/o.: Old Jalna,  
Jalna, Tq. and Dist.: Jalna
5. Sudam Devrao Chilgar,  
Age: 32 Years, Occu.: Service as  
Shikshan Sevak, R/o.: Watur Fata,  
Jalna, Tq. and Dist.: Jalna
6. Dnyaneshwar Chandrakant Kharat,  
Age: 30 Years, Occu.: Service as  
Shikshan Sevak, R/o.: Sambhaji Nagar,  
Jalna, Tq. and Dist.: Jalna
7. Satish Bhimrao Nivre,  
Age: 27 Years, Occu.: Service as

Shikshan Sevak, R/o.: Sonal Nagar,  
Jalna, Tq. and Dist.: Jalna

8. Smt. Amruta Narayanrao Kalwatre,  
Age: 29 Years, Occu.: Service as  
Shikshan Sevak, R/o.: Badnapur,  
Tq.: Badnapru, Dist.: Jalna

9. Chandrakant Gajanan Mutkule,  
Age: 25 Years, Occu.: Service as  
Shikshan Sevak, R/o.: At Chalisgaon,  
Post: Chikhli,  
Tq.: Badnapur, Dist.: Jalna

.. **Petitioners**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
School Education Department,  
Mantralaya, Mumbai-32

2. The Education Officer (Secondary),  
Zilla Parishad, Jalna

.. **Respondents**

Shri V. S. Panpatte, Advocate for the Petitioners.

Shri A. S. Shinde, A.G.P. for Respondents.

**CORAM** : **S. V. GANGAPURWALA &**  
**A. M. DHAVAL, JJ.**

**DATE** : **9<sup>th</sup> January, 2018**

**ORAL JUDGMENT** *(Per S. V. Gangapurwala, J.)* :

1. Rule.

2. Rule returnable forthwith. With the consent of learned

counsel for respective parties matter is taken up for final hearing.

3. Under the impugned order the proposal seeking approval to the appointment of the petitioner Nos. 3 to 9 is rejected.

4. Mr. Panpatte, learned advocate for the petitioners submits that the petitioner – Institution is minority Institution. According to the learned advocate the proposal is rejected basically on the ground that permission has not been obtained. The procedure for filling in the post is not followed and that there was ban on recruitment and surplus candidates were required to be absorbed.

5. According to the learned advocate for the petitioners, though applications were given seeking permission to fill in the posts the respondent - Education Officer did not respond to the same and thereafter advertisement were issued on 11.9.2016 and 14.9.2016. Pursuant to advertisement the selection process was followed and the petitioner Nos. 3 to 9 were appointed. The learned advocate submits that certificate is already filed on record notifying the petitioner - Institution as a minority Institution.

6. Learned A.G.P. submits that the permission of the Education officer was not obtained by the petitioner. There are

large number of surplus candidates to be absorbed. Considering these aspects the Education Officer has rightly rejected the approval.

7. We have considered the submissions.

8. The Government has issued resolution thereby stating that the minority institutions cannot be mandated to absorb the surplus teachers. It is up to the minority Institutions to absorb the surplus teachers or not.

9. It appears that the petitioner No. 1 has given applications on number of occasions seeking permission from the Education Officer to fill in the vacant post, however, the Education Officer did not respond to the applications and after waiting for considerable time the advertisements were issued to fill in the posts and after the advertisement were issued adhering to the selection process the petitioner Nos. 3 to 9 were appointed. It was for the Education Officer to pass orders on the applications given by the petitioner seeking permission to fill in the post. The Education Officer did not pass any orders for a considerable period of time. Now the Education Officer cannot turn around and contend otherwise.

10. The petitioner - Institution it appears is recognized as a minority institution. The fact of absorption of surplus candidates

would not arise. The applications were already given for filling in the post to the Education Officer and thereafter advertisements were issued.

11. Considering all the aforesaid aspects of the matter, the impugned order is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner afresh and shall not reject it on the ground on which the impugned order is passed. The said proposal shall be decided expeditiously and preferably within a period of four (4) months.

12. Rule is accordingly made absolute in above terms. No costs.

**[A. M. DHAVAL, J.]**

**[S. V. GANGAPURWALA, J.]**

marathe/Jan.18