

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

WRIT PETITION NO. 7840 OF 2017

Maharashtra Shikshan Prasarak Sanstha,
Killari and others.

Petitioners.

Versus

The State of Maharashtra & ors.

Respondents.

Mr. S.S. Manale, Advocate for the petitioners.

Mr. S.G. Karlekar, A.G.P. for the State/respondent Nos.1 to 4.

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

Dated : **14th June, 2018.**

ORDER :-

Mr. Manale, learned Counsel for the petitioners submits that petitioner No.3 is physically disabled. The Disability Certificate is issued by the Government Medical College and Hospital, Latur. The Board who had examined the petitioner No.3 was consisting of Additional Civil Surgeon-Member Secretary, Additional Civil Surgeon-President and Assistant Professor-Member. After following due process the petitioner No.3 has been appointed from open (physically disabled) category. The information received by the

petitioners under Right to Information Act also states that there are no surplus candidates from the physically disabled category. Even an application was given seeking permission to fill in the post. But the Education Officer did not respond.

2. Mr. Karlekar, learned Additional Government Pleader submits that the procedure as required under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act is not followed. The permission is not sought of the Education Officer. There are surplus candidates available. The proposal seeking the approval to the appointment of the petitioner submitted to the Education Officer states that the petitioner is appointed from Open Category.

3. We had specifically asked the learned Additional Government Pleader as to whether the Education Officer, after receiving the application from the Institution, had at any time forwarded surplus candidate to the Institution. It is submitted that till date surplus candidates has not been forwarded to the Institution where the petitioner No.3 is working.

4. The petitioner relies on roster approved by the Deputy Director of Education, Latur Division and Assistant Commissioner, Aurangabad certifying that as per roster Point No.36 the post is admissible for disabled employee. The petitioner has produced the

disability certificate issued by the Competent Board of the Government Medical College. An application was given by the Institution to the Education Officer seeking permission to fill in the post. The Education Officer did not respond, even did not care to send any surplus teacher to the Institution. It is certainly laxity on the part of the Education Officer.

5. Though the proposal is submitted from Open Category, as per the roster point, the petitioner is treated from disabled category. The advertisement also states that the person with physical disablement would be given preference. Considering the roster approved by the Competent Authority, the petitioner shall be considered from physically disabled category, of course if the post is admissible for physically disabled person.

6. In the light of the above, we pass the following order.

- (i) The impugned order is quashed and set.
- (ii) The Education Officer shall reconsider the proposal seeking approval to the appointment of petitioner No.3 considering her from physically disabled category, on its own merits and in accordance with law and policy, however, shall not reject it on the ground on which the impugned order is passed.
- (iii) He may consider the roster and whether petitioner No.3 possesses the requisite qualification.

- (iv) The proposal shall be considered expeditiously, preferably within six months from today.

7. Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/