

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

925 WRIT PETITION NO. 11629 OF 2017

1. KISHOR S/O DILIP HULSURE
2. RAJESH S/O RAMNATH CHAVAN
3. SANTOSH S/O RAJARAM CHAVAN
4. MUNSHI MOHD. FAYAZ AHMED TAKI AHMED
5. SMT. LEENA DILIPRAO ANDHARE

V/s.

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Solanke Shrikrashna B.

AGP for Respondents/State : Mrs. G.L. Deshpande

Advocate for Respondents/State : Mr. A.R. Gaikwad for R/3 to 6

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

DATE : 24.11.2018

PC. :-

Heard the learned counsel appearing for the petitioners, the learned A.G.P for respondent nos.1 and 2 and the learned counsel for the other respondents. With the consent of the parties the petition is taken up for final hearing disposal.

2. The petitioners are challenging the order passed by the Education Officer (Secondary), Zilla Parishad, Latur dated 27.04.2017. It is submitted before us by the counsel appearing for the petitioners that the petitioners are

belonging to reserved category and as the posts for Teachers' were falling vacant, the institute and particularly the Headmaster forwarded certain communications seeking permission to fill these posts. It is then submitted that as no orders were passed the institute proceeded further by issuing advertisement in the local newspaper. In response to the advertisement petitioners submitted their candidature. The petitioners were appointed by the institute, whereas, petitioner no.1 was appointed to teach English subject and as there was no decision on the proposal for quite some time the petitioners along with the other petitioners approached this Court by filing writ petitions and in bunch of petitions namely Writ Petition No. 2145 of 2016 and other connected petitions. The Division Bench of this Court by an order dated 30.07.2017 directed the respondent authorities to decide the proposal within stipulated period of 12 weeks from the date of the order.

3. By an order dated 27.04.2017 i.e. after the stipulated period, the order is passed by the Education Officer rejecting the proposal of the petitioners. Learned counsel for the petitioners submitted that the grounds for rejection is that the appointment of the petitioners were made without seeking prior approval and were done in the ban period. Then there is other ground raised that though there were Additional Teachers available without absorbing these additional excess Teachers the petitioners are appointed.

4. The learned counsel submitted that none of the ground is sustainable for rejection. The learned counsel submitted that even though the management institute requested the authorities for grant of permission to issue advertisement by bringing it to the notice of the authority that the institute is willing to issue an advertisement, no permission was granted. The petitioners were appointed prior to the effect of ban period. It is then submitted by the learned counsel that this issue is dealt with by the Division Bench of this Court at Principal Seat and heavy reliance is placed on the judgment of the Division Bench in Writ Petition No. 8587 of 2016. It is then submitted by the learned counsel that the Division Bench while dealing with the issue carved out three categories and the petitions were allowed, these categories are referred to in paragraph 9 of the judgment and order. Learned counsel submitted that all the petitioners fall in category 'c', whereas petitioner no.1 would fall in category 'b' as well as in category 'c' as the petitioner no.1 was appointed to teach English subject and he is a candidate of reserved category.

5. Though, the learned A.G.P made an attempt before us to oppose the petition on the ground that the management institute was not having any backlog and there was a verification. It was then submitted by the learned A.G.P. that along with the affidavit in reply, the verification for the academic years 2012-2013 and 2013-2014 is placed on record. Though, the learned

A.G.P. made an attempt to oppose the petition on the ground that the institute appointed the petitioners from reserved category, in fact there was no such backlog of the reserved category candidates was available. There is nothing to place on record to show that when the proposals were submitted and more particularly when the individual proposals were submitted to the Education Officer on 26.08.2013, 22.10.2013, 28.10.2013, 28.12.2013 and 03.11.2014, the Education Officer informed the management to hold the proposals on the ground that these appointments are made without there being any backlog of the reserved category candidates. Apart from this, this very ground is not raised in the rejection order. The rejection order only states two grounds firstly these appointments are made in ban period and secondly in spite of availability of additional and excess teachers the institute failed to absorb these additional teachers.

6. On going through the affidavit in reply, we could not find anything placed on record to show that the Education Officer at any point of time informed the management about the availability of the Additional Teachers and the institute to have firstly absorbed these teachers and then to take further steps. In absence of any such material, the ground on which the opposition is raised that too by way of a supplementary ground not reflecting in the rejection order cannot be accepted.

7. The learned counsel was justified in placing reliance on the judgment of the Division Bench at Principal Seat. The learned counsel was also justified in submitting that all the petitioners would fall in category 'c' and petitioner no.1 would fall in category 'b' and 'c' as the petitioner no.1 was appointed to teach English subject.

8. In view of these facts, the writ petition is allowed in terms of prayer clause 'b' and 'c'.

[MANGESH S. PATIL, J.]

[PRASANNA B. VARALE, J.]