

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

WRIT PETITION NO.6856 OF 2016

Sandeep s/o. Vishnudas Kasle ..Petitioner

Vs.

The State of Maharashtra
and ors. ..Respondents

Mr. V.D.Gunale, Advocate for petitioner

Mr. V.S.Badakh, AGP for respondent nos.1 to 4

Mr. A.N.Sabnis, Advocate for respondent no.5

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATE : OCTOBER 23, 2018

PER COURT

Mr.Gunale, learned Counsel for the petitioner, submits that after following the proper procedure, the petitioner was appointed as Assistant Teacher to teach English subject, pursuant to the order dated 09.12.2013. He submits that the petitioner possesses B.A., B.Ed. qualification. The post has become vacant on retirement of the teacher, who was teaching this

subject. The reason given for rejection of the proposal for approval to the appointment of the petitioner, is erroneous.

2. Mr.Badakh, learned AGP for the respondent – State, submits that an application was filed by the respondents – Institution to the Education Officer, seeking permission to fill-in the said post. But, within fifteen days thereafter, the Institution issued the advertisement and appointed the petitioner. He submits that there are surplus candidates available, who can be accommodated in the place of the petitioner. He submits that the Education Officer has rightly considered all the aspects.

3. It appears that an application was filed by the Institution to the Education Officer, seeking permission to fill-in the said post. Of course, advertisement has been issued by the Institution after about fifteen days. It is also required to be

seen that till date, the Education Officer has not sent any surplus candidate to the respondents - Institution. The petitioner has acquired B.A., B.Ed. qualification as per the affidavit of the Education Officer dated 10.08.2018.

4. Mr.Sabnis, learned Counsel for the respondents - Institution, submits that one more post of S.T. category is vacant and the Institution is ready to accommodate the surplus teacher on the said post in Marathi, History and Geography subjects. We had asked the learned AGP about the availability of the surplus teachers for the post of Marathi, History and Geography subjects, to which he submits that within one month, the Education Officer would send surplus teacher to the respondents - Institution.

5. If the Education Officer refers the surplus candidates from S.T. Category for teaching Marathi, History and Geography subjects to the respondents - Institution, the respondents - Institution would be

duty bound to accept the said surplus candidate. It appears that the Education Officer has not forwarded any surplus candidate from the year 2013 till date, to the Institution for absorption. It was stated that in 2017 one surplus candidate was sent by the Education Officer to teach Hindi subject, but as the workload for Hindi subject was not available with the respondents - Institution, the Institution communicated the Education Officer to send surplus teacher to teach Marathi subject. But till date, the Education Officer has not sent any surplus candidate to teach that subject.

6. In the light of the above, the impugned order is quashed and set aside. The Education Officer shall reconsider the proposal sent for approval to the appointment of the petitioner as Assistant Teacher, on and from 10.07.2014, on its own merits and in accordance with law and shall not reject the same on the the grounds that there are surplus candidates and that the procedure under Section 5 was

not followed. The proposal be decided within four months.

7. The Writ Petition is accordingly disposed of. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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