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

WRIT PETITION NO.8687 OF 2017

Sharad s/o Sheshrao Kulkarni & anr. ... PETITIONERS

VERSUS

The State of Maharashtra & others ... RESPONDENTS

.....
Shri V.S. Panpatte, Advocate for petitioners
Shri A.V. Deshmukh, A.G.P. for State
Shri I.D. Maniyar, Advocate for respondents No.3 and 4
.....

CORAM: S.V. GANGAPURWALA AND
 SUNIL K. KOTWAL, JJ.

DATED : 15th MARCH, 2018.

ORAL ORDER :

1. The proposal seeking approval to the appointment of the petitioner is rejected. We have heard learned Advocate Mr. Panpatte for the petitioner, learned A.G.P. and Mr. Maniyar, learned counsel for respondents No.3 and 4.

2. It is stated that, the application seeking permission for filling in the post was initially given on 15.2.2013. No response was received and the advertisement was issued on 10.3.2013. Pursuant to the advertisement, the petitioner No.1 is appointed. One more advertisement was given for filling in the

post on 6.5.2013. Thereafter, advertisement was issued on 8.7.2013. Pursuant thereto, the petitioner No.2 was selected from O.B.C. category from English subject.

3. We had asked the learned A.G.P. whether in this period the surplus teacher was referred for absorption, the answer was in the negative.

4. When the institution has given application to the Deputy Director of Education seeking permission to fill in the post, then it was the duty of the Deputy Director of Education to refer the surplus teacher for absorption with the institution. It was failure on the part of Deputy Director of Education to sit over the application and not to refer the surplus candidates for absorption. The institution could not have kept the post vacant for a long period. Considering that no response was received from Deputy Director of Education, the institution advertised the post and selected the petitioners, the proposal was rejected basically on the ground that there was ban on recruitment, no objection was not obtained and that there is backlog. The backlog, it is stated, is of the post meant for unaided divisions.

5. The petitioner had approached the Deputy Director of Education, but as the Deputy Director did not respond for a long time, the institution had filled in the post. As such, now the

Deputy Director cannot turn around and contend otherwise.

6. Learned counsel for the institution undertakes to fill in the post meant for backlog category.

7. It is not the case of the respondents that the post on which the petitioners are appointed, are not available.

8. Considering the above, the impugned orders are quashed and set aside. The respondents shall consider the proposals seeking approval to the appointment of the petitioners afresh within a period of four months from today and shall not reject it on the ground on which the impugned order is passed. Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

fmp/