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

WRIT PETITION NO.8465 OF 2017

Shivshankar S/o Suryakant Chillarge,
Age : 34 years, Occupation : Service as
Shikshan Sevak, R/o Manglur,
Tq. Jalkot, Dist. Latur

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,
Department of School Education,
Mantralaya, Mumbai - 32
2. The Commissioner of Education,
Maharashtra State,
Senapati Bapat Marg,
Pune
3. The Education Officer (Secondary),
Zilla Parishad, Latur
4. Lokjagruti Education Society,
Waland, Tq. Devni,
Dist. Latur
5. The Head Master,
Dyanwardhi Vidyalaya,
Manglur, Tq. Jalkot,
Tq. Mukhed, Dist. Nanded

..RESPONDENTS

Mr V.S. Panpatte, Advocate for petitioner;
Mr S.M. Ganachari, A.G.P. for respondents no.1 to 3;
Mr P.G. Gunale, Advocate for respondents no.5 & 6

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 26th September, 2018

ORAL ORDER:

Heard learned Counsel appearing on behalf of the respective parties.

2. The petitioner challenges the order passed by respondent no.3 Education Officer (Secondary), dated 20th January, 2017 thereby rejecting the proposal seeking grant of approval to his appointment.

3. Mr Panpatte, learned Counsel appearing on behalf of the petitioner, by inviting our attention to the various Government Resolutions placed on record submitted that the petitioner was a candidate belonging to Other Backward Classes category having a requisite validity certificate in his favour and having the requisite qualifications, namely, B.A., B.Ed., staked the claim in response to the advertisement issued by the management in daily newspaper "Ekjut" on 1st March, 2014. The petitioner was subjected to an exercise of the interview and on 5th March, 2014 he was appointed as Shikshan Sevak in the school, namely, Dnyanwardhini Vidyalaya, Manglur. A copy of appointment order of the petitioner is also placed on record.

4. Mr Panpatte then submitted that the Education Officer, only on an erroneous reading of the Government Resolutions, without considering the factual aspects of the matter and on raising a ground that the institute failed to absorb surplus teachers, rejected the proposal.

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5. Mr Panpatte firstly invited our attention to the Government Resolution dated 21st August, 2013 and submitted that the State Government, in view of the peculiar facts and circumstances, took an exercise of special drive and extended the period for filling up the posts. He then submitted that as the petitioner was appointed to teach English subject by following due procedure, the case of the petitioner is covered under the judgment and order of this Court at the principal seat as well as the orders passed at the Benches. Learned Counsel also invited our attention to an order passed by this Court dated 20th August, 2018 in Writ Petition No.3945 of 2017. He also invited our attention to a document placed on record at the instance of the management along with the affidavit-in-reply filed by the management. The document is Exh.1 at page 89 of the paper-book. It is communication dated 11th December, 2013 forwarded to the Education Officer (Secondary) with a request for grant of permission to fill up the post of an Assistant Teacher to teach English subject. It is stated in the communication that due to retirement of one Mr Anture, the post is falling vacant and the management be permitted to appoint an Assistant Teacher.

6. Mr Panpatte also invited our attention to the document placed on record to submit that the insistence of the Education Officer in the order that the surplus teacher available was not absorbed, is unsustainable. Our attention was invited to Exh.G. It is submitted that the said communication refers to availability of one surplus teacher, but he is a candidate from

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General category and was competent to teach the other subjects, namely, Marathi and Hindi. In view of these facts, it is submitted by Mr Panpatte that such insistence to absorb this person and rejection done on that ground is unsustainable.

7. On considering the above referred material and in view of the judgment rendered by the Division Bench of this Court at principal seat in a bunch of petitions i.e. Writ Petition No.8587 of 2016 with other connected petitions, we find considerable merit in the submission of Mr Panpatte. Resultantly, the petition deserves to be allowed. Writ Petition is accordingly allowed in terms of prayer clauses (B) and (C).

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

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