

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

WRIT PETITION NO. 8588 OF 2016

**RAJASTHANI EDUCATION SOCIETY TILAK NAGAR THROUGH ITS
SECRETARY AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.S.R.Choukidar, Advocate for the petitioners
Mr.K.N.Lokhande, AGP for the respondent/State
Mr.N.S.Kadam, Advocate for respondent No.2.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 11.09.2018**

P.C. :-

Mr.Choukidar, learned Advocate submits that on account of vacancy arisen, the petitioner No.1 applied to the Education Officer on 17.10.2015 seeking permission to fill up the posts. No response was received. On 15.12.2015 advertisement was issued and after following selection process, petitioner Nos. 2 to 4 are appointed under appointment order dated 20.02.2016. The petitioner No.2 belongs to OBC category, petitioner No.3 belongs to VJ (Handicap) and petitioner No.4 belongs to SC category. The learned counsel submits that today on 11.09.2018 petitioner No.1 Institution has absorbed one surplus teacher, namely, Totewad sent by the Education Officer in its institution from ST category. According to the learned counsel all these petitioner Nos.2 to 4 are from reserved category. Ban on recruitment is not applicable. The learned counsel relies on the judgment and order passed by the Principal Seat at Bombay in Writ Petition No.10580 of 2015 with connected matters dated 09.03.2017. According to

the learned counsel the appointments of petitioner Nos. 2 to 4 are as per the roster for reserved category.

2. Mr. Kadam, learned Advocate for the respondent submits that the petitioner did not intimate about the vacancy having occurred in a month of February, August and October 2015 and application was made only on 17.10.2015. The learned counsel submits that in November, 2017 surplus candidates were sent to petitioner No.1 institution for absorption but were not absorb.

3. We have considered the submissions. The proposal seeking approval to the appointment of petitioner Nos.2 to 4 is rejected only on the ground that surplus teachers are available for absorption and unless they are absorbed the approval cannot be granted.

4. It is not disputed that petitioner No.1 Institution on 17.10.2015 made an application to the Education Officer seeking permission fill up the post. As no response was received from the Education Officer, the posts were advertised on 15.12.2015 and thereafter petitioner Nos.2 to 4 are selected and appointment order is issued to them on 20.02.2016. All these petitioners are from reserved category. Petitioner No.2 belongs to OBC category, petitioner No.3 belongs to VJ category and petitioner No.4 belongs to SC category. As contended by the petitioners to show the bonafide, it is submitted that the petitioner No.1 has absorbed one surplus candidate from ST category sent by the Education Officer, namely, Totewad on 11.09.2018. The said statement is accepted.

5. The surplus candidates which were sent to the

petitioner-Institutions were after a period one and half year of the appointment of petitioner Nos.2 to 4.

6. Naturally the Education Officer ought to have taken steps to send the surplus candidates to petitioner No.1, more particularly, when on 17.10.2015 he received the application seeking permission to fill in the vacant post. The respondent Education Officer got the knowledge of the vacancy existing with petitioner No.1 but the same was not filled in.

7. Petitioner Nos.2 to 4 are from reserved category. The ban on recruitment would not apply as held by the Division Bench at the Principal Seat at Bombay in Writ Petition No. 10580 of 2015 with connected Writ Petitions under order dated 09.03.2017.

8. Considering the above, the impugned order is quashed and set aside. The respondent Education Officer shall decide the proposal seeking approval to the appointment of petitioner Nos.2 to 4 afresh on its own merits and shall not reject on the ground on which the impugned order is passed. The same shall be decided expeditiously, preferably within four months.

9. Writ Petition disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]