

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11446 OF 2017

Swati Satish Musne

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri Dayanand Hange h/f Shri U. L. Momale and N. D. Kendre,
Advocate for the Petitioner.

Mrs. A. V. Gondhalekar, Addl. G. P. for Respondent Nos. 1 to 3.

Shri Raghavendra N. Bharaswadkar, Advocate for Respondent
Nos. 4 and 5.

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 26th February, 2018

PER COURT :

1. Learned advocate for the petitioner submits that the petitioner was appointed after following due selection process. The petitioner is appointed from O.B.C. category. The petitioner has the validity certificate to that effect. According to the learned advocate the proposal seeking approval to the appointment of petitioner is rejected only on the ground that at the relevant time there was ban on recruitment. The ban would

not apply to fill the post from reserved category. The learned advocate further submits that the due selection process was adhered to.

2. The learned A.G.P. submits that, in view of the Government Resolution dated 2nd May, 2012, the institution could not have appointed the candidate as there are large number of surplus candidates to be accommodated.

3. We have considered the submissions.

4. It appears that the institution has given the application seeking permission to fill in the post on 23.9.2013. No communication was received from the Education Officer. As such, the institution advertised the post and after advertisement inviting applications, the petitioner was selected and issued appointment order on 22.10.2013. There is nothing on record to suggest that at the relevant time surplus candidates were sent to the institution and the institution had refused to absorb them. Moreover, the petitioner is appointed from O.B.C. category.

5. The said ban on recruitment on that count also would not apply.

6. In light of the above, the impugned order is quashed and set aside. The Education Officer shall re-consider the proposal seeking approval to the appointment of the petitioner afresh and shall pass orders expeditiously and preferably within four (4) months. The proposal for approval shall not be rejected on the ground that Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 was not followed or that there was ban on recruitment or that surplus candidates were required to be absorbed.

7. The writ petition accordingly stands disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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