

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

**WRIT PETITION NO. 11230 OF 2017**

Santosh Suryabhan Sable and others .. **Petitioners**

**Versus**

The State of Maharashtra and others .. **Respondents**

Shri V. S. Panpatte, Advocate for the Petitioners.

Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 1 and 2.

Shri Abhijit Choudhari h/f Shri Bhausahab B. Bhise, Advocate for Respondent Nos. 3 and 4.

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

**DATE** : **8<sup>th</sup> February, 2018**

**PER COURT :**

1. The proposal seeking approval to the appointment of the petitioners is rejected. Aggrieved thereby the present petition.
2. Mr. Panpatte, learned advocate for the petitioners submits that all these petitioners are appointed on the posts meant for reserved category. All these petitioners possess the validity certificate. The directions under section 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation

Act, 1977, (hereinafter referred to 'MEPS Act') are scrupulously followed. The permission to fill in the posts was sought by the Institution on 10.6.2013. No response was received from the Education Officer. Thereafter the posts were advertised and after following selection process the petitioners were appointed. The proposal is immediately forwarded by the management, however, the Education Officer decided the said proposal after three years and nine months.

3. The learned advocate for the petitioners further submits that, for three years no surplus candidates were forwarded to the Institution for absorption of S.C. and O.B.C. category. The learned advocate submits that, even as per Government Resolution dated 21.8.2013, the ban on recruitment would not apply to the candidates from reserved category.

4. Learned A.G.P. submits that the Education Officer has not granted permission to the Institution to fill in the posts. According to the learned A.G.P., no such application was made seeking permission to fill in the posts. According to the learned A.G.P., there are surplus teachers available in the list of surplus

teachers maintained in the office of respondent No. 4 and those surplus teachers are required to be absorbed. The surplus teachers were sent to the respondent – Education Institution on 12.10.2017, but they are not absorbed. The proposal is rightly rejected.

5. The learned advocate for the Institution submits that entire procedure under Section 5 of the MEPS Act, has been followed. Applications are given to the Education Officer, no response was received. The posts were meant for reserved category and for three years no surplus candidates were sent to the respondent Institution.

6. The details are as under-

| Sr. No. | Name of Petitioners        | Category                  | Name of Posts & Subject | Permission sought on | Date of Advertisement | Date of Appointment w.e.f. | Date of Submission of proposal to Res. No. 4 | Date of rejection of approval | Appointment under Special Drive                                                                                                                                                                          |
|---------|----------------------------|---------------------------|-------------------------|----------------------|-----------------------|----------------------------|----------------------------------------------|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Santosh Suryabhan Sable    | S.C. Validity (P.No.27)   | S.Sevak                 | 10.06.13             | 28.07.13 (P.No.32)    | 21.08.13 (P.No.33)         | 30.08.13 (P.No.55)                           | 20.01.17 (P.No.56)            | Appointment of Petitioners are from reserve category and same is permissible under G.R. dt. 21.08.13, as well as judgment and order dt.09.03.17 passed in W.P. No.10580/15 is applicable (P.No.60 to 63) |
| 2       | Mounika Navrutti Zunzurute | S.C. Validity (P.No.29)   | S.Sevak                 | Do                   | Do                    | 21.08.13 (P.No.35)         | Do                                           |                               |                                                                                                                                                                                                          |
| 3       | Alka Prahlad Vyanjane      | O.B.C. Validity (P.No.31) | S.Sevak                 | Do                   | Do                    | 21.08.13 (P.No.37)         | Do                                           |                               |                                                                                                                                                                                                          |

7. It would appear that the application was given by the Institution on 10.6.2013, seeking permission to fill in the posts. No response was received from the Education Officer. Thereafter advertisement is issued on 28.7.2013 and after the selection procedure, the petitioners are appointed on 21.8.2013. The petitioner Nos. 1 and 2 belong to Schedule Caste category and petitioner No. 3 belongs to O.B.C. All these petitioners hold the validity certificates. The ban on recruitment would not apply to reserved category candidates. Moreover, there is nothing on record to show that for four years the Education Officer has sent surplus candidates for absorption with the respondent - Institution. It is stated in October-2017 surplus candidates were sent, however, that was almost more than four years. The petitioners were already appointed. We would have entertained the case of the respondent had the surplus candidates been sent earlier, immediately at the time of appointment of the petitioners, but that is not the case.

8. Considering the above, the impugned orders are quashed and set aside. The respondent - Education Officer shall decide

the proposal seeking approval to the appointments of the petitioners afresh, on its own merits, on considering the roster and the other aspects. However, shall not reject it on the ground that no permission was obtained and that surplus candidates were available.

9. The writ petition is disposed of. No costs.

**[A. M. DHAVAL, J.]**

**[S. V. GANGAPURWALA, J.]**

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