

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

WRIT PETITION NO.9783 OF 2016

Gangadhar s/o. Ashok Puramwar ..Petitioner

Vs.

The State of Maharashtra
and ors. ..Respondents

Mr.V.S.Panpatte, Advocate for petitioner
Mrs.P.V.Diggikar, AGP for respondent nos.1 and 2

**WITH
CIVIL APPLICATION NO.13660 OF 2018
IN
WRIT PETITION NO.9783 OF 2016**

Ramesh Digambarrao Deshmukh
Shilvanikar ..Applicant

Vs.

Gangadhar s/o. Ashok Puramwar
and ors. ..Respondents

Mr.P.D.Bachate, Advocate for applicant
Mrs.P.V.Diggikar, AGP for respondent nos.1 and 2
Mr.V.S.Panpatte, Advocate for petitioner in W.P.

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : NOVEMBER 19, 2018**

PER COURT :

The proposal for approval to the appointment of the petitioner has been rejected by the respondent.

2. Heard Mr.Panpatte, learned Counsel for the petitioner, learned AGP for respondent nos.1 and 2 and Mr.Bachate, learned Counsel for the intervenor.

3. The proposal for approval to the appointment of the petitioner has been rejected only on the grounds that there are surplus teachers available and the procedure under Section 5(1) of the M.E.P.S. Act was not followed.

4. The petitioner states that the Institution had submitted an application to the Education Officer on 02.06.2016, seeking permission to fill up the vacant post. Thereafter, on 09.06.2016, an advertisement was issued for filling up that post from Scheduled Tribe Category. According to the

petitioner, the ban on recruitment was relaxed to the extent of S.T. Category candidates, as per the Government Resolution dated 21.08.2013. The petitioner relies on the judgment of Division Bench of this Court at Principle Seat in the case of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra, Through Secretary and ors., delivered on 10.07.2017 in Writ Petition No.8587 of 2016 and connected Writ Petitions** wherein, in paragraphs 8 and 9, it is observed thus :-

"8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education

Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of whose inaction the State exchequer will be burdened.

9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents – Education Officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories:-

(a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;

(b) where the appointments made for

filling up vacancies in English,
Mathematics and Science;

(c) where the recruitment is made to
fulfill the backlog of reserve
categories candidates;

5. According to the learned Counsel for the intervenor, the roster is not verified and prepared. There is dispute amongst the management of the Institution.

6. We had asked learned AGP, as to whether the Education Officer has sent any surplus candidate to the respondent – Institution. The affidavit filed by learned AGP does not state that any surplus candidate was sent to the respondent – Institution for absorption.

7. In view of the judgment of the Division Bench in the case of **Smt. Munoli Rajashri Karabasappa** (supra), the impugned order, rejecting the proposal for approval to the appointment of the petitioner, on

the grounds that there is surplus teacher available and the procedure under Section 5(1) of the M.E.P.S. Act was not followed, is set aside.

8. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner on its own merits and in accordance with law, expeditiously and preferably, within four weeks from today. The Education Officer, while deciding the proposal, shall take into consideration the relevant aspects of the matter such as qualification, roster, etc.

9. The Writ Petition is accordingly disposed of. No Costs.

10. In view of disposal of the Writ Petition, the Civil Application does not survive and stands disposed of.

[R.G. AVACHAT, J.]
kbp

[S.V. GANGAPURWALA, J.]