

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

WRIT PETITION NO. 10861 OF 2017

Amit S/o Manikrao Wakade

... Petitioner

VERSUS

The State of Maharashtra & Ors.

... Respondents

.....
Mr T. M. Venjane, Advocate for the petitioner
Mr A. V. Deshmukh, AGP for respondent/State
.....

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

DATE : 20TH FEBRUARY, 2018.

ORDER:

1. The proposal seeking approval to the appointment of the petitioner is rejected.
2. We have heard Shri. Venjane, the learned counsel for the petitioner and the learned Asst. Government Pleader for the State.
3. Initially, the proposal seeking approval to the appointment of the petitioner was rejected by the Education Officer. The petitioner filed petition bearing Writ Petition No. 241/2017. This

Court under order dt. 07.04.2017, set aside the order of the Education Officer rejecting the proposal seeking approval to the appointment of the petitioner as Shikshan Sevak and observed that, the Institution had not adhered to the procedure. Application was given to the Education Officer seeking permission. The advertisement was also given and thereafter the appointment was made. The further direction was given to the Education Officer not to reject the proposal on the ground on which the impugned order was passed. The impugned order was passed on the grounds that the proviso to Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) was not followed, there was ban on recruitment and the surplus candidates were available.

4. It is not disputed that, for the first time, the Education Officer referred surplus candidates in the year 2015-16. The petitioner is appointed on 24.06.2013. Naturally for such a long period post could not have been kept vacant. In fact, the Education Officer could not have gone into the factum of adherence to the Section 5 of the MEPS Act, ban on recruitment or availability of surplus candidates, more particularly, in view of order of this Court dt. 07.04.2017 in Writ Petitions No. 241 of 2017 and 243 of 2017.

5. In case, again same mistake is committed, the court will be constrained to take action under Contempt of the Courts Act against the concerned Education Officer.

6. The impugned order is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner afresh expeditiously, preferably within a period of four months from today.

7. We again reiterate that the proposal shall not be rejected on the ground of Section 5 of the MEPS Act or that there was ban on recruitment or the availability of surplus candidates.

8. The writ petition is, accordingly, disposed of. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde