

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10850 OF 2017

Satyabhama Pralhadrao Nagime

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri Tukaram M. Venjane, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 and 2.

Shri P. D. Suryawanshi, Advocate for Respondent No. 3.

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

DATE : **15th February, 2018**

PER COURT :

1. The proposal seeking approval to the appointment of petitioners as 'Shikshan Sevak' is rejected. Aggrieved thereby present petition.

2. Mr. Venjane, learned advocate for the petitioner submits that, the posts for Mathematics subject had become vacant. The respondent No. 3 - school applied to the Education Officer seeking permission to fill in the posts on 14.05.2013. The Education Officer did not respond. Thereafter, the respondent No. 3 - school published an advertisement inviting applications for filling in the posts. Pursuant to the advertisement, the

petitioner applied and was selected and appointed after following due selection process. The Education Officer never directed the respondent No. 3 - school to absorb surplus candidates for all these years.

3. The learned Assistant Government Pleader for respondent Nos. 1 and 2 submits that, the appointment of petitioner is during the ban period. The Education Officer had never given permission to the respondent No. 3 - school to fill in the posts. The provisions of Sec. 5 of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Act is not followed. The order is rightly passed by the Education Officer.

4. We have considered the submissions canvassed by learned counsel for respective parties.

5. In the affidavit, the Education Officer accepts that, he had received an application from the respondent No. 3 - school seeking permission to fill in the posts. The Education Officer did not respond to the application filed by the respondent No. 3 - school. He did not communicate the rejection of the application, nor granted permission. It is not disputed that, the posts were

vacant. The petitioner was appointed after one month of the application being given. Till the petitioner was appointed, the Education Officer never directed the respondent No. 3 - school to absorb the surplus candidates. The posts could not have been kept vacant for such a long period. It was inaction on the part of the Education Officer in not forwarding the surplus teachers for absorption in the respondent No. 3 - school. The respondent No. 3 - school had applied to the Education Officer seeking permission to fill in the posts, but the Education Officer sat over that application and did not respond.

6. Considering the aforesaid conspectus, the impugned order is quashed and set aside. The Education Officer shall decide the proposal filed by petitioner afresh and shall not reject it on the ground on which the impugned order is passed. The said proposal shall be decided expeditiously and preferably within a period of four (04) months from today. The writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

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[S. V. GANGAPURWALA, J.]