

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

WRIT PETITION NO.3285 OF 2012

Almas Mushtar Siddiqui d/o.
Musadiq Mohiuddin Siddiqui ..Petitioner

Vs.

The State of Maharashtra
and others ..Respondents

**WITH
WRIT PETITION NO.3325 OF 2012**

Almas Mushtar Siddiqui d/o.
Musadiq Mohiuddin Siddiqui ..Petitioner

Vs.

The State of Maharashtra
and others ..Respondents

Mr.S.R.Choukidar, Advocate i/b. Mr.V.P.Golewar,
Advocate for petitioners

Mr.V.S.Badakh, AGP for respondent no.1

Mrs.Yogita Kshirsagar, Advocate for respondent no.2

Mr.H.I.Pathan, Advocate for respondent nos.3 and 4

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : DECEMBER 18, 2018**

ORDER :

2. Heard the learned Counsel for the petitioners, the learned AGP for respondent no.1, the learned Counsel for respondent no.2 – Zilla Parishad and the learned Counsel for respondent nos.3 and 4 – Institution.

3. The petitioner in Writ Petition No.3325 of 2012 was appointed as a Shikshan Sevak on 30.10.2004 on probation of two years. The services of the petitioner as Shikshan Sevak has been approved on 15.06.2009. The petitioner in Writ Petition No.3285 of 2012 was appointed as a Shikshan Sevak on 05.12.2005. Approval has been granted to his appointment with effect from 01.07.2009.

4. The contention of the petitioners is that after having been appointed as Shikshan Sevaks, their services are required to be approved as Shikshan Sevaks upon completion of the period of probation. The proposal for approval cannot be considered from 2009 onwards.

5. According to the learned Counsel for respondent no.2 – Zilla Parishad, the surplus candidates were absorbed in the respondent/ Institution in December, 2008 and the post was not vacant. He submits that as and when the said post had become vacant upon death or retirement of the Assistant Teacher, the petitioners were granted approval as Shikshan Sevaks from the said dates. From 2008 and 2009, there were no vacant posts. The approval to the appointment has been granted from the date on which the post was vacant.

6. It is not disputed by the respondents, that the petitioner in Writ Petition No.3325 of 2012 was appointed as a Shikshan Sevak on 30.10.2004 and the petitioner in Writ Petition No.3285 of 2012 was appointed as a Shikshan Sevak on 05.12.2005. They had completed the period of probation. Thereafter, the management absorbed the surplus candidates on 2008, because of which vacant post was not available.

7. Anomalous situation has arisen as, when the petitioners became permanent, the surplus candidates were absorbed by the Institution. Certainly, the Government cannot be saddled to pay the salary of two persons for one post. However, the petitioners also were not terminated from service. They were the permanent employees in the said Institution. The Education Officer, thereafter, granted approval to the appointments of the petitioners from the date, on which the posts had become vacant after death and or retirement of Assistant Teacher. In fact, the said approval should be without payment of salary to the petitioner, which would be the only equitable way to resolve the anomalous position.

8. In the light of the above, we pass the following order :-

9. The Education Officer shall modify the impugned order to the effect that the appointment of the petitioner in Writ Petition No.3325 of 2012,

shall be approved as Shikshan Sevak from 30.10.2004 and the appointment of the petitioner in Writ Petition No.3285 of 2012, shall be approved as Shikshan Sevak from 05.12.2005 and upon completion of period as Shikshan Sevak, their approval should be considered for the post of Assistant Teachers. However, the petitioners herein shall not be paid salary for the period from 12.12.2008 till the post had become vacant i.e. 12.12.2008 to 15.06.2009 and to the petitioner in Writ Petition No.3325 of 2012 and from 12.12.2008 to 30.06.2010 to the petitioner in Writ Petition NO.3285 of 2012.

10. The Writ Petition is accordingly disposed of. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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