

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

WRIT PETITION NO. 10277 OF 2016

Shrikant Bhimrao Kadam and others .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Shri Shahaji B. Ghatol Patil, Advocate for Petitioners.

Shri V. S. Badakh, A.G.P. for Respondent Nos. 1 to 4.

Shri B. A. Shinde, Advocate for the Respondent No. 5.

Shri V. S. Panpatte, Advocate h/f Shri R. R. Bangar, Advocate for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 08TH OCTOBER, 2018.

FINAL ORDER :

. The proposal seeking approval to the appointments of the petitioners as Shikshan Sevaks is rejected.

2. Mr. Ghatol, the learned advocate for petitioners submits that, the institution had given application on 17.01.2014 and 01.10.2014 seeking permission to fill in the posts that had become vacant. No response was received from the Education Officer. Thereafter advertisement was issued on 19.02.2014 and 01.12.2014. After following due procedure, petitioners are appointed. The petitioner No. 3 is appointed from the Scheduled Caste category. Proposal is rejected only on the ground that there are surplus candidates to be

absorbed. According to the learned counsel, one surplus candidate was sent by the Education Officer to the institution for absorption. The institution has absorbed the said surplus candidate and same is accepted by the Education Officer in its letter dated 22.07.2016 written to the Commissioner.

3. Mr. Shinde, the learned advocate for the respondent No. 5 /Education Officer submits that, there are large number of assistant teachers surplus. They are required to be absorbed. There is ban on recruitment. In view of that, the order is rightly passed.

4. There is no denial on the part of the respondents that, the institution submitted applications seeking permission to fill in the posts. No response was received from the Education Officer. Thereafter, advertisements were issued inviting applications and after following due selection process, the petitioners are appointed.

5. It also appears from the letter issued by the Education Officer (Primary) to the Commissioner (page 100) that the institution has absorbed one surplus teacher as directed by the Education Officer.

6. It was for the Education Officer to send surplus candidates to the institution for absorption. For years together the posts could not be kept vacant. The students would suffer. Whenever surplus

candidate has been sent, the institution has absorbed the surplus candidate. The petitioner No. 3 is appointed from the S. C. category. The ban on recruitment would not apply to a candidate from the S. C. category.

7. Considering the fact that, institution has absorbed surplus candidate that was referred to the institution and that no other surplus candidate has been sent to the institution for absorption. Even for a period of four years after appointments of the petitioners and that the procedure was followed and the permission was sought by the institution thereafter advertisement was issued. It was lethargy on the part of the Education Officer in not responding to the applications given by the institution seeking permission to fill in the posts. Considering all the aspects of the matter, impugned order is quashed and set aside. The Education Officer shall reconsider the proposal seeking approval to the appointments of the petitioners on its own merits expeditiously and preferably within a period of four (04) months from today. The proposal shall not be rejected on the ground on which the impugned order is passed. The writ petition accordingly is disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 18

Bhalchandra
Sudhakar
Bodke

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