

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

WRIT PETITION NO. 12223 OF 2017

Suwarna Tukaram Balande .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri. V. S. Panpatte, Advocate for the Petitioner.

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

Shri. A. N. Sabnis, Advocate for Respondent No. 4.

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

DATED : 11th April, 2018

PER COURT:

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

2. The learned advocate for the petitioner submits, that the application was given by the institution to the respondent/Education Officer seeking permission for filing in the post from Scheduled Caste

category on 09.07.2012. The post had become vacant because of the retirement of one Assistant Teacher namely Shri. M. V. Muglikar. Thereafter, advertisement was issued on 21.09.2012. Thereafter, the petitioner is selected and appointed. The learned counsel submits that the proposal for approval is rejected solely on the ground that section 5 of the M.E.P.S. Act is not observed and that there are surplus teachers to be absorbed. According to the learned counsel, the petitioner belongs to Scheduled Caste category and also possess the validity certificate.

3. The learned Assistant Government Pleader submits that, section 5 of the M.E.P.S. Act has not been scrupulously followed by the institution while appointing the petitioner. There are large number of surplus candidates which are required to be observed.

4. The ban on recruitment does not apply for filing in the post of Schedule Caste category. The document is produced on record to show that an application was given by the institution to Education Officer. An extract of inward register is also produced on record. For filing in one post, which became vacant on account of retirement of one Mr. M. V. Muglikar advertisement was given by the institution. The ban on recruitment does not apply for filing in the Scheduled Caste category post.

One of the reason for rejection of the proposal for approval is that absorption of surplus candidate. The same would not apply.

5. Considering the above, we pass the following order.

6. The impugned order is quashed and set aside. The Education Officer shall reconsider the proposal submitted by the management seeking approval to the appointment of the petitioner, considering the fact that, post became vacant on account of retirement of Mr. M.V. Mugalikar, the petitioner is appointed. So also considering the roster and it shall also consider the application given by the institution, advertisement, the availability of the post and the roster while deciding the proposal. However, shall not reject the same on the ground that surplus candidates are required to be absorbed.

7. The same 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. DHAVALÉ, J.]

[S. V. GANGAPURWALA, J.]