

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

BENCH AT AURANGABAD.

WRIT PETITION NO.12551 OF 2017

Amrapali D/o Vithalrao
Lohakare ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.V.S.Panpatte, advocate for the petitioner.
Mr.A.S.Shinde, A.G.P. for the State.
Mr.V.P.Golewar, advocate for Respondent Nos.4 and
5.

...

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

Date : 12.02.2018.

PER COURT :

1. Mr.Panpatte, learned counsel submits that the Education Officer has rejected the proposal seeking approval to the appointment of the petitioner under the impugned order on the same grounds as stated in the order dated 27.1.2017 which is set aside by this Court in Writ Petition No.1863/2017 under order dated

April 7, 2017. The learned counsel submits that entire procedure has been followed. The same is considered by this Court while deciding Writ Petition No.1863/2017. Again the Education Officer has committed the same mistake deliberately. The Respondents be directed to grant approval to the appointment of the petitioner and pay salary to the petitioner.

2. Learned A.G.P. states that large number of surplus candidates are yet to be absorbed. In view of that, order is passed by the Education Officer.

3. The proposal seeking approval to the appointment of the petitioner as Shikshan Sevak was forwarded by the institution to the Education Officer. The Education Officer under order dated 27.1.2017, rejected the proposal seeking approval to the appointment of the petitioner on the ground that Section 5(1) and proviso to Section 5(1) of the MEPS Act is not followed, so also there are large number of surplus candidates to be absorbed. The Education Officer also referred

to the Government Resolution dated 2.5.2012.

4. The petitioner had challenged the order refusing approval to his appointment by filing Writ Petition No.1863/2017. This Court on April 7, 2017 set aside the order of the Education Officer dated 27.1.2017 and directed the Education Officer to decide the proposal seeking approval to the appointment of the petitioner afresh with further direction that the proposal shall not be rejected on the ground on which the impugned order was passed.

5. Perusal of the order impugned in the present Writ Petition, it is manifest that the Education Officer has again rejected the proposal seeking approval to the appointment of the petitioner on the same ground upon which the earlier order dated 27.1.2017 was passed and the said order having been set aside by this Court.

6. It would be seen that the earlier order dated 27.1.2017 and the instant impugned order dated 31.7.2017 is passed by the same Education

Officer Dr.Ganpat More.

7. By passing the impugned order, the Education Officer has sat over the judgment and order of this Court passed in Writ Petition No.1863/2017 dated April 7, 2017. The Education Officer was aware of the order dated April 7, 2017, passed in Writ Petition No.1863/2017, as the said order is reflected in the impugned order.

8. In the order dated April 7, 2017 in Writ Petition No.1863/2017, we have observed as under :

"5. In view of the above, the impugned order is quashed and set aside. Respondent No.3 - Education Officer shall decide the proposal forwarded by the Institution seeking approval to the appointment of the petitioner afresh, in accordance with law and shall not reject the same on the grounds on which the impugned order

has been passed. The proposal be decided expeditiously and preferably, within a period of four months from today."

9. The impugned order is not sustainable. In fact, the impugned order amounts to the contempt of the order passed by this Court on April 7, 2017 in Writ Petition No.1863/2017.

10. The Education Officer was duty bound to consider the directions given by this Court in Writ Petition No.1863/2017 under order dated April 7, 2017 being the order between the same parties and could not have relied on the general order passed in Writ Petition No.9076/2016.

11. Considering the above, the impugned order is quashed and set aside. The Education Officer is directed to pass the orders on the proposal seeking approval to the appointment of the petitioner and shall not reject it on the ground that there are surplus candidates or that provisions of Section 5(1) and proviso is not

followed.

12. In case the proposal is rejected on the same ground, this Court will be constrained to take action of contempt against the said Education Officer.

13. The said proposal shall be decided within two (2) months. The Writ Petition is disposed of. No costs.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

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