

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

WRIT PETITION NO. 11659 OF 2016

**SEEMA SHITALNATH GOMATE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.V.S.Panpatte, Advocate for the petitioner
Mr.S.B.Sonpawale, AGP for the respondent/State.
Mr.N.L.Jadhav, Advocate for respondent Nos.3 and 4
Mr.R.S.Pawar, Advocate for respondent No.2.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 09.10.2018**

P.C. :-

The proposal seeking approval to the appointment of the petitioner is rejected.

2. Mr. Panpatte, learned counsel submits that respondent Nos.3 and 4 requested the respondent No.2 Education Officer (Primary) so also Deputy Director of Education to grant permission to fill in the post under applications dated 21.06.2012 and 19.03.2013 respectively. No response was received. Thereafter advertisements were given on 22.07.2012 and 30.06.2013 in Daily Newspaper "Apla Maharashtra" and upon following the selection process, the petitioners are appointed.

2. The learned counsel submits that it is only after the response was not received from the Education Officer and the Deputy Director of Education, the advertisement was issued. The post became vacant because of the retirement of the teachers.

3. Mr. Jadhav, learned counsel for the Institution submits that whenever surplus candidates are sent by the Education Officer the Institution has absorbed the surplus candidates. All procedure has been followed. Applications were given to the Education Officer bringing it to his notice that the post had become vacant. No response was received. Thereafter advertisement was issued and by following proper selection procedure, petitioners are appointed.

4. Mr. Pawar, learned counsel for the Education Officer accepts that the Institution has absorbed the surplus candidates referred to it. He further submits that as when the vacant post arises surplus candidates would be sent. Surplus candidates are available. Only because the Education Officer did not respond that did not give the Institution right to fill in the vacant post.

5. We have considered the submissions. It was brought to the notice of the Education Officer that two posts of the Assistant Teachers had become vacant on account of retirement of two Senior teachers. The same was brought to the notice under application 31.07.2012 and 30.06.2013. The Education Officer did not respond to the applications. Subsequently advertisement is given. Even the Education Officer has communicated to the Deputy Director that the Institution has absorbed surplus candidates and sought guidance for deciding the proposal of the petitioners.

6. We specifically asked the learned counsel for the Education Officer that whether during this period the surplus teachers were sent for absorption to the Institution. The learned counsel on instructions submits that only one teacher was sent for absorption to the Institution and the Institution has absorbed the surplus teacher. The said surplus teacher is sent in the year 2016. Apart from sending one surplus teacher that has been absorbed by the Institution, the Education officer did not refer any other surplus candidates for absorption with the institution. The post had become vacant on 31.07.2012 and 30.06.2013 respectively. For all these years the post could not have been kept vacant. Whenever surplus candidates are directed to be sent to the respondent Institution, the institution has absorbed them.

7. Considering the aforesaid aspect of the matter, the impugned order is quashed and set aside. The Education officer shall reconsider the proposal seeking approval to the appointment of the petitioner on its own merits and in accordance with law and policy and shall not reject only on the ground on which the impugned order is passed.

8. The Writ Petition is disposed of. No costs.

[S.M.GAVHANE, J.]

[S.V. GANGAPURWALA, J.]