

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.430 OF 2017**

|                                            |                      |
|--------------------------------------------|----------------------|
| <b>Smt. Sangeeta Balwant Faske</b>         | <b>..Petitioner</b>  |
| <b>Versus</b>                              |                      |
| <b>The State of Maharashtra and others</b> | <b>..Respondents</b> |

**Mr. A. R. Belge, Advocate for the Petitioner.**

**Mr. Vikas Mali, AGP for Respondent Nos.1 to 4.**

**Mr. Umesh H. Pawar, Advocate for Respondent Nos.5 and 6 –  
Management.**

**CORAM : B. R. GAVAI &  
B. P. COLABAWALLA, JJ.  
DATE : 23<sup>rd</sup> JANUARY, 2018**

**PC.**

**1]**           The Petitioner has approached this Court contending therein that the action of Respondent Nos.5 and 6 in appointing a new teacher without giving an opportunity to the Petitioner under Rule 26(4) the MEPS Rules is illegal.

**2]**           The facts are not disputed. The Petitioner was working as a Assistant Teacher of Hindi subject in Respondent No.6 school. Since the Petitioner's services became surplus, the Petitioner came to be absorbed in another school. However, it appears that on account of the death of one teacher teaching subject of Science and Math, the post became available in the Respondent No.6 school. It further appears that in the

meantime, since reservation is increased from 34% to 52%, the said post was treated as reserved category and one Sandip Yellappa Kamble came to be appointed on the said post on 24<sup>th</sup> February 2014.

3] It is the contention of the Petitioner that since the Petitioner was declared surplus in view of Rule 26(4) of the MEPS Rules, the Petitioner should have been first offered that post. We find that the Petition deserves to be dismissed on several grounds. Firstly, the Petitioner has not impleaded the person who has been appointed as party Respondent. Therefore, the Petition suffers from non-joinder of necessary party. Secondly, the post on account of change in reservation policy, was required to be filled in from a candidate belonging to reserved category. Undisputedly, the Petitioner belongs to open category. Thirdly, on account of the death of one teacher teaching subject of Science and Math the post became vacant, whereas the Petitioner is teacher of Hindi Subject. The Petition is therefore rejected.

**[B. P. COLABAWALLA, J.]**

**[B. R. GAVAI, J.]**