

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

WRIT PETITION NO. 1627 OF 2017

Sou. Kirti Rahul Gaikwad
(Nee Kirti Arun Wable)

...Petitioner

Versus

The State Of Maharashtra
Through The Secretary,
School Edu. And Sports Dept. And Ors.

...Respondents

Mr.Prashant Bhavake for the Petitioner.

Mr.Vikas M. Mali, AGP for Respondent Nos.1 to 5.

Mr.Umesh Hanmantrao Pawar for Respondent Nos.6 & 7.

**CORAM : B.R. GAVAI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 12th APRIL 2018

P.C.

1. Rule. Rule made returnable forthwith.

2. Heard by consent.

3. The petitioner has approached this Court being aggrieved by the order dated 26th December 2016 thereby rejecting the approval to the appointment of the petitioner as Shikshan Sevak. The petitioner is appointed as Shikshan Sevan on 01st July 2010

against the post available for open category. Accordingly the management had sent proposal for grant of approval to the petitioner's appointment. Since, the same was not decided the petitioner was required to approach this Court by way of Writ Petition No.1304 of 2016. This Court vide order dated 22nd November 2016 directed the proposal to be decided within four weeks.

4. In pursuance to the orders passed by this Court the respondent-Education Officer passed impugned order. The ground given for not granting approval to the petitioner's appointment is that there was a backlog of Scheduled Tribe category candidates and as such approval could not be granted.

5. The perusal of the page 48, it would reveal that for the relevant year the sanctioned posts for open category were 34 and the actual candidates occupying post were 31. We have also seen that there was a backlog of one post belonging to Scheduled Tribe category. The perusal of material on record would show when petitioner was appointed, one Ms. Pornima Sitaram Shirsat was also appointed from ST category and approval is granted by respondent No.5 by order dated 14th October 2014.

6. It can thus be seen that the ground on which the approval is rejected to the petitioner's appointment is untenable as on the day on which the petitioner was appointed the candidate belonging to ST category was also appointed. In any case there were three posts which were available for open category and as such the petitioner could have been appointed for one post from open category.

7. In the result, the impugned order dated 13th January 2014 and 26th December 2016 are quashed and set aside. The Education Officer to grant the approval to the appointment of the petitioner as Shikshan Sevak from 01st July 2010. Needless to state that on completion of the three years period of Shikshen Sevak the petitioner is entitled to be absorbed in the category of the Assistant Teacher with effect from 01st July 2013.

8. All arrears to be payable to the petitioner on the basis of the aforesaid shall be cleared within a period of three months from the date of receipt of this order.

(SMT.BHARATI H. DANGRE, J.)

(B.R. GAVAI, J.)