

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

**WRIT PETITION NO.13485 OF 2016**

Miss Rekha Vithal Said ..... Petitioner  
Versus  
The State of Maharashtra  
Through the Secretary, School  
Education Department And Others ..... Respondents

.....

Mr. N.V. Bandiwadkar for the Petitioner.  
Ms. Geeta Sonawane, Assistant to Assistant Government Pleader for  
Respondent Nos.1 and 2.  
Mr. M.B. Kale for Respondent Nos.3 and 4.

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**CORAM : S.C.GUPTE, J.**

**DATE : 16 JULY 2018**

**P. C. :**

. Heard learned Counsel for the Petitioner and learned AAGP for the State.

2 **Rule.** Rule taken up for hearing forthwith by consent of learned Counsel for the parties.

3 This petition challenges refusal on the part of the Education Officer, Zilla Parishad, Pune in confirming the Petitioner's appointment as "Shikshan Sevak". The petition is opposed by the State (Respondent Nos.1 and 2). Respondent Nos.3 and 4, who are, respectively, the trust and its school, in which the Petitioner has been working as teacher, support the

petition.

4 Respondent No.4 is an aided secondary school. By a communication dated 3 March 2014, the school informed the Education Officer that due to retirement of its two teachers, respectively, on 31 March 2012 and 31 May 2013, two posts of teachers had fallen vacant and requested for the latter's permission for filling the vacant posts for the academic year 2014-15. Though this letter was admittedly received by the Education Officer, there was no response on his part. The school management, in the premises, proceeded to issue an advertisement on 22 May 2014 for filling the vacant posts. (The post, with which we are concerned in the present petition, is the post of Marathi teacher-BA B.Ed, which became vacant on account of retirement of the incumbent teacher on 31 May 2013.) The Petitioner applied, and after following regular appointment procedure, was selected, for the post and appointed as 'Shikshan Sevak' with effect from 12 January 2015. The Petitioner completed her statutory probation period of three years and has been due for confirmation as an Assistant Teacher. In the meantime, in response to the application of the school management in that behalf, by his impugned order dated 28 November 2016, the Education Officer declined to accord his approval to the appointment of the Petitioner, purportedly on the ground that there was no prior permission of the Education Office before filling up the vacancy and that surplus teacher was not absorbed whilst making the appointment.

5 There are a number of judgments of our court, making it clear that the ban on recruitment of teachers pending absorption of surplus teachers under Government Resolution dated 2 May 2012 could not be invoked by

the State, when despite communication of a vacancy of a teacher's post by the school management to the Education Officer and seeking of his permission for filling the post, the Education Officer does not reply or forward any name of a surplus teacher to be appointed in the vacancy and, as a result, the school management proceeds to select and appoint a teacher in the vacant post. Admittedly, the Respondent-State has neither responded to the school management's communication in this case nor sent any name of a surplus teacher at any stage prior to the impugned order dated 28 November 2016. As this court has reiterated time and again, when the school management informs the education office about a vacancy in its school seeking the latter's permission for appointment, the Education Officer is expected to either forward names of suitable persons from the list of surplus teachers maintained by him or if no surplus teacher is available for absorption, give permission to the management to appoint a teacher following regular appointment procedure. Education Officer, in the present case, has done neither of these things. The school management is not expected to carry on with the vacancy awaiting indefinitely the Education Officer's response. The second reason cited, namely, the appointment not being in compliance of the backlog of reserved category, also does not hold water. Admittedly, the post which had become vacant and in which the Petitioner was appointed, was an open category post and there was no question of it being filled up from amongst reserved category candidates.

6 In the premises, the impugned order of the Education Officer cannot pass muster. **Rule** is, accordingly, made absolute by allowing the petition, and quashing and setting aside the impugned order dated 28 November

2016. Respondent No.2 Education Officer is directed to grant approval to the Petitioner's appointment with effect from 12 January 2015 and also allow grant of aid to the school for payment of honorarium to the teacher with effect from the date of her appointment including all arrears upto date. As for the approval of her appointment as an Assistant Teacher pursuant to completion of her probationary period, the school management will be at liberty to apply for such approval. The Education Officer shall act in accordance with law as discussed above whilst dealing with such application.

7 All parties to act on the authenticated copy of this order.

(S.C. GUPTE, J.)

Rajesh  
Vasant  
Chittewan

Digitally signed  
by Rajesh Vasant  
Chittewan  
Date: 2018.07.23  
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