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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.2997 OF 2017

Smita Prasad Deokar and others	..Petitioners
Versus	
State of Maharashtra and others	..Respondents

Mr. Mihir Desai, Senior Counsel i/by Ms. Devyani Kulkarni, Advocate for the Petitioners.

Mr. Kedar Dighe, AGP for Respondent Nos.1 to 4.

Mr. Arvind Kothari i/by Ms. Nandini G. Menon, Advocate for Respondent Nos.5 and 6.

**CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.**

DATE: 12th FEBRUARY, 2018

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard, by consent of parties.

2] Petitioners have approached this Court being aggrieved by the order dated 19/09/2017 vide which earlier approval granted to the Petitioners' services as Assistant Teachers vide order dated 08/06/2017 came to be withdrawn.

3] Petitioners were appointed as Shikshan Sevaks, after following the entire selection process as prescribed under the Rules. Since the

period of Petitioners' services as Shikshan Sevaks was to come to an end in February 2014, Respondent No.6 submitted a proposal for grant of approval to them as Assistant Teachers. It appears that, within the prescribed period, approval was not granted to the Petitioners and this fact was communicated by Respondent No.6 to the Petitioners. However, vide order dated 08/06/2017 approval was granted with effect from 24/02/2017. However, the same has been withdrawn.

4] Mr. Mihir Desai, learned Senior Counsel appearing on behalf of the Petitioners, submits that in view of the judgment and order passed by Division Bench of this Court in Writ Petition No.10133 of 2016 along with companions matters dated 01/08/2017, the impugned order is not sustainable inasmuch as this Court has held that, the Education Officer has no power of review.

5] Mr. Dighe, learned Counsel appearing on behalf of Respondent Nos. 1 to 4, vehemently opposes the Petition. He submits that, the present case would be squarely covered by the area carved out by this Court in the very same judgment. He submits that in para 6 of the said Judgment, this Court has held that, if the order is obtained by exercising fraud, it would be vitiated. He further submits that, since there were several Teachers and Shikshan Sevaks declared as surplus in various Schools coming under the management of Respondent No.5, Respondent Nos. 5 and 6 could not have submitted the proposal for grant of approval to the Petitioners' appointment. He therefore

submits that, since the proposal was submitted in spite of there being surplus position in the Schools run by Respondent No.5, the same would come within the meaning of “fraud”. He therefore submits that, since in the present case, earlier order is obtained by suppression, it amounted to fraud and as such, Petitioners are not entitled to the benefit of the said judgment and order.

6] Mr. Kothari, learned Counsel appearing on behalf of Respondent Nos. 5 and 6, on the contrary submits that, in respect of the Schools run by Respondent No. 5 - Management, the staffing pattern was not received on the date on which the proposal was sent for granting approval to the services of the Petitioners. He submits that, as a matter of fact, in Respondent No.6 – School there were additional vacancies, even after the approval could be granted to the services of the Petitioners. He submits that, staffing pattern in respect of Respondent No.6 – School was received in the month of November, 2017, which would show that against the sanctioned strength of 91 staff, employees in Respondent No.6 – School were only 88.

7] It is undisputed that, when the Petitioners were appointed as Shikshan Sevaks in the month of February, 2014, there were no surplus teachers either in Respondent No.6 – School or in any of the Schools under the management of Respondent No.5. It appears that, on account of staffing pattern, which was required to be done under the provisions of the Right to Education Act, the surplus teachers came to be declared in some of the Schools run by Respondent No.5.

However, insofar as Respondent No.6 – School is concerned, the staffing pattern came to be informed to Respondent No.5 on 30/11/2016. It is also not in dispute that, in respect of the said School, there is no surplus position.

8] In that view of the matter, we are unable to accept the contention of the learned AGP that, Respondent Nos. 5 and 6 have indulged into the act of suppression or fraud.

9] In the result, Petition deserves to be allowed and is allowed. The impugned Order dated 19/09/2017 is quashed and set aside. The Order dated 08/06/2017 shall stand restored.

10] It is however made clear that, Respondent No.5 herein shall not make any appointment in the teaching staff until services of all the Petitioners and Shiksan Sevaks are absorbed.

11] Rule is made absolute in the aforesaid terms.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)