

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

WRIT PETITION NO.3130 OF 2017

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| 1. | Nitin s/o. Annandrao Mane
Age. 27 years, Occ. Service,
R/o. At Jawala (Kh), Post. Waghi,
Tq. Jintur, Dist. Parbhani. | .. | Petitioners |
| 2. | Ramrao s/o. Manikrao Armal
Age. 28 years, Occ. Service,
R/o. Mandava, Tq. & Dist. Parbhani. | | |

VERSUS

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| 1. | The State of Maharashtra
Through the Secretary,
Education Department,
Mantralaya, Mumbai – 32. | .. | Respondents |
| 2. | The Education Officer [Primary]
Zilla Parishad, Parbhani,
Tq. & Dist. Parbhani. | | |
| 3. | The Head Master,
Prabhavati Prathamik Vidyalaya,
Vidya Nagar, Parbhani. | | |

**WITH
WRIT PETITION NO.3138 OF 2017**

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| 1. | Prameshwar s/o. Kisanrao Khedkar
Age. 29 years, Occ. Service,
R/o. Jintur Road, Near Choudhari
Hospital, Parbhani & Tq. & Dist. Parbhani. | .. | Petitioners |
| 2. | Prashant Pralhadrao Renge
Age. 26 years, Occ. Service,
R/o. Vaibhav Nagar, Parbhani. | | |

3. Pravinkumar Bhagwanrao Dhumal
Age. 26 years, Occ. Service,
R/o. Ganganagar, Hingoli,
Tq. & Dist. Hingoli.

VERSUS

1. The State of Maharashtra .. Respondents
Through the Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Education Officer [Primary]
Zilla Parishad, Parbhani,
Tq. & Dist. Parbhani.
3. The Head Master,
Nutan Prathamik Shikshanlaya
Parbhani.

Mr.L.H. Kawale, Advocate for the petitioners.
Mr.A.V. Deshmukh, Advocate for respondent No.1.
Mr.B.A. Shinde, Advocate for respondent No.2.
Mr.S.S. Dambe, Advocate for respondent No.3.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.
DATED : 10.06.2019**

ORAL JUDGMENT [PER : SUNIL P. DESHMUKH, J.] :-

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties finally by consent.
2. The petitioners are seeking writ of certiorari or directions in the nature of certiorari against the order dated 21.01.2017, passed by respondent No.2 - Education Officer (Primary), Zilla Parishad, Parbhani,

communicating refusal of approval to appointments of present petitioners. Under impugned order, it has been referred to that since 14 teachers and 73 other category employees are to be accommodated and having regard to the order in Writ Petition No.9076 of 2016 and proviso under section 5 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,1977 until all surplus teachers are accommodated, decision upon proposals submitted on 24.03.2016 and 20.04.2016 would not be taken referring to the decision by Nagpur Bench in Writ Petitions No.6606 of 2015, 6607 of 2015 with companion writ petitions and Writ Petition No. 156 of 2016.

3. There is no serious dispute about that petitioner had sought permission from respondent No.2 on 08.07.2015 and 05.03.2015 to advertise two posts of teachers and there had been no response given to the same. After about three months advertisement had been published in news-paper on 11.10.2015 and 29.07.2015 and thereupon by following due procedure, *inter alia*, constituting selection committee, appointment orders in favour of the petitioners had been issued on 23.10.2015 and 14.08.2015 and accordingly it appears that proposal for grant of approval to their appointments had been moved. For almost two years, no decision had been taken on the same and under impugned order negation to the request has been communicated.

4. Learned Counsel Mr. Kawale appearing for the petitioners submits that compliance on the part of management is easily discernible from the events and no action had been taken on the request by respondent No.2. Communicating refusal after two years that too on

over-stretching technicalities is not proper. He places reliance on decision by Division Bench of this Court in Writ Petition No.3708 of 2017. Referring to said decision, he submits that relevant factual aspects in said matter and the present situation are quite close. He submits that permission for advertisement has been sought. Neither advertisement nor appointment of the petitioner has been disputed. Only reason for negation is ban put under resolution in May, 2012 and availability of surplus teachers. In such case, negation ought to have been immediately communicated. Respondent No.2 had sat tight over the proposal, which is not proper and not in consonance with principles of natural justice. The petitioners had never been called upon by respondent No.2. He submits that similar directions be given in the present matters as have been given in paragraph 8 of above said decision in Writ Petition No.3708 of 2017, which reads thus :-

" 8. Considering the above, the impugned order is quashed and set aside. The respondent-Education Officer shall consider the proposal seeking approval to the appointment of petitioners afresh and shall not reject it on the ground on which the impugned order is passed. The Education Officer is directed to consider all other aspects of the matter. The said proposal shall be decided expeditiously preferably within four months. "

5. On the other hand Mr. B.A. Shinde, appearing for respondent No.2 stiffly resists the request and he submits that as referred to under the impugned order at relevant time 14 surplus teachers and about 73 other employees were to be accommodated. Over and above, the Government had issued ban on appointment of private school employees

by passing resolution in May, 2012. He submits that ban imposed by the Government shows that unless and until there is 100% absorption of surplus teachers, there would not be fresh appointment in private schools. The ban still continues. He further contends, it cannot be said that advertisement had been given in news-paper which was widely circulated in the area. He, thus, contends that the procedure had been only ostensibly followed. He, therefore, supports the impugned order.

6. Having regard to aforesaid and taking over all view, it would be seen that for almost about 18 months, after the petitioners were appointed and even before that while permission for advertisement had been sought in July, 2015, no response whatsoever had been given by respondent No.2. It is not the case of respondent No.2 that no such request had ever been received at his office. It is also not denied that there had been advertisement issued on 11.10.2015 and 29.07.2015. It also does not appear that while making appointments, due procedure had not been followed. It is also not denied that proposals for approval to the appointment of petitioners had been submitted on 24.03.2016 (W.P. No.3130 of 2017) and on 20.04.2016 (W.P. No.3138 of 2017). At no point of time during the period from the date of request for advertisement for appointment to the date of passing impugned order, petitioners had even been communicated about availability of surplus employees for accommodation. Negative communication has been issued rather too late. In these circumstances, it would be pertinent to refer to observations of Division Bench in its decision in Writ Petition No.3708 of 2017 in paragraphs No.6 and 7 reading thus :-

“ 6. Almost after about a year, after the last candidate was appointed, surplus candidate was referred, no reason is forthcoming from the Education Officer for not forwarding the surplus candidates for absorption in the respondent-Institution though large number of vacancies were available. It was a lethargy on the part of the Education Officer in not sending the surplus candidates immediately though Education Officer had the knowledge of the vacancies with the respondent-Institution thereby frustrating the scheme of absorption of surplus candidates.

7. The petitioners No.4 to 8 are appointed from reserved category. The ban on recruitment has been relaxed for them. The petitioners No.1 to 3 are from open category. The applications seeking permission to fill in the posts were given to the respondents. The respondents did not respond for more than one year. The posts could not have been kept vacant for such a long period. ”

. It has been referred to that some of the petitioners are reserved category candidates. In the circumstances, we deem it appropriate to treat present writ petitions as observed by the Division Bench in paragraph No.8, reproduced here-in-above. Impugned orders are set aside. Proposals are restored to their position for decision afresh and shall not be rejected on the grounds on which impugned orders are passed.

7. The institution as well may make application with regard to sanction to the posts to appropriate authority and if such application is made or has already been made, concerned authority shall consider the same on merits as expeditiously as possible, preferably within a period of

six months. We hope that appropriate decision would be taken objectively expeditiously.

8. Rule made absolute accordingly. The petitions stand disposed of.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]