

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

WRIT PETITION NO.4286 OF 2017

Santosh s/o Ganpatrao Talegave,
Age : 25 years, Occu.: Service as
Assistant Teacher,
R/o. Shivajinagar, Mukhed, Tq. Mukhed,
District Nanded.
At present R/o. Yeoti, Tq. Mukhed,
District Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary
School Education and Sport Department,
Mantralaya, Mumbai.
2. The Education Officer, (Secondary)
Zilla Parishad, Nanded,
District Nanded.
3. Kisan Shikshan Prasarak Mandal,
Yeoti, Tq. Mukhed, Dist. Nanded,
Registered Trust : Through its Secretary.
4. Shri. Shivaji Secondary and
Higher Secondary School, Yeoti,
Tq. Mukhed, District Nanded.
Through its Head Master.

...RESPONDENTS

Mr. V.H.Dighe, Advocate for the petitioner
Mr. V.S.Badakh, AGP for the respondent/State
Mr. Kishor Gadhave Patil, Advocate for respondent Nos.3
and 4.

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 09.01.2019

P.C. :-

1. Heard Mr. Dighe, learned counsel for the petitioner, Mr. Gadhave Patil, for respondent Nos.3 and 4 and learned AGP for the respondent/State.

2. The petitioner by way of present petition challenged the order passed by the Education officer (Secondary) dated 28.02.2017 thereby rejecting the proposal for grant of approval in favour of the petitioner submitted by the respondent No.3 Institute through the respondent No.4 Head Master.

3. Learned counsel for the petitioner submitted that the issue involved in the petition is already concluded by various judgments of this Court. The learned counsel invited our attention to the judgment and order of this Court delivered at the Principal seat considering in bunch of petitions, namely, Writ Petition No.8587 of 2018 and connected writ petitions. The learned counsel then invited our attention to the documents placed on record to ascertain factual aspects.

4. It is the submission of the learned counsel for the petitioner that the petitioner was appointed initially as Shikshan Sevak. On the backdrop of the fact that one Shri.G.T.Kamble was to retire and the post was falling vacant. It is also submitted before us that before publishing the advertisement respondent No.4 apprise the Education Officer (Secondary) by communication dated 15.05.2016. The proposed action of the institute all necessary facts were brought to the

notice of the Education Officer. Then invited our attention to the copy of the advertisement published in the local newspaper "Mahasagar" dated 17.06.2016. It is also submitted before us that this post was to be filled up from the candidates available from open category. Then our attention was invited to the appointments order placed on record. The learned counsel then submitted that as there was no decision on the proposal for considerable long time, the petitioner had approached this court by present Writ No.12384 of 2016 and the petition was disposed of with the directions to decide the proposal.

5. The learned counsel then submitted that the order dated 28.02.2017 is passed only on a mechanical observations that the respondent management failed to absorb excess teachers. The learned counsel submitted that in respect of fact brought to the notice of the Education Officer that the management is proceeding further for issuance of advertisement for filling up the post. There was no response from the Education Officer and more particularly the Education Officer never informed about the availability of excess teachers to be absorbed.

6. The learned counsel then submitted that in view of the facts of the present matter the case of the petitioner is squarely covered by the judgment of the Division Bench in Writ Petition No.8587 of 2016 and other petitions and more particularly the case of the petitioner would be governed by the Division Bench

referred to in paragraph No. 9 of the judgment.

7. Though the petition is opposed by the learned AGP relying on the affidavit in reply, on perusal of the material and on the backdrop of the judgment of the Division Bench delivered at the Principal seat, we are unable to accept the submission of the learned AGP.

8. The learned counsel for the petitioner made out a case for allowing the petition.

9. Accordingly the petition is allowed in terms of prayer clause B and C.

[S.M.GAVHANE,J.]

[PRASANNA B. VARALE,J.]