

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

WRIT PETITION NO. 3859 OF 2018

Gopal Wamanrao More

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri V. S. Panpatte, Advocate for the Petitioner.

Ms. P. V. Diggikar, A.G.P. for the Respondent No. 1.

Shri A. N. Nagargoje, Advocate h/f Shri H. S. Bali, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATE : 14TH JANUARY, 2019.

FINAL ORDER :

. The proposal seeking approval to the appointment of the petitioner is rejected.

2. We have heard the learned counsel for respective parties.

3. According to the petitioner the applications were consistently given from 10.11.2008 onwards for filling in the post of Maths subject and also of other subjects. The applications according to the petitioner are dated 10.11.2008, 23.06.2009, 13.07.2009, 28.10.2010, 03.10.2011 and 03.01.2012. It is further

contended that, no response was received from the Education Officer. Thereafter advertisement was issued on 07.01.2012. It is further contention of the petitioner that, pursuant to the advertisement, the petitioner applied for the post of Maths. He was selected and appointment order was issued to the petitioner on 23.01.2012.

4. The proposal for approval is rejected on the ground that there are surplus teachers and no permission was obtained from the Education Officer. There is violation of Section 5(1) of the M. E. P. S. Act.

5. In the affidavit in reply filed by the Education Officer, the Education Officer has not disputed having received applications seeking permission for filling in the post of Maths subject.

6. It also does not appear that for all these years the Education Officer had sent the candidates for absorption in Maths subject. The Principal Seat at Bombay in Writ Petition No. 8587 of 2016 with other connected writ petitions under order dated 10th July, 2017 has issued directions. Para No. 9 of the said order reads thus :

9. In the result the Writ Petitions are allowed and impugned orders are quashed and set aside. The Respondents — Education Officers are directed to examine independent

cases and grant approval to each of the teachers who fall in the following three categories:-

(a) Where the recruitment process is already commenced prior to GR dated 2nd May 2012;

(b) where the appointments made for filling up vacancies in English, Mathematics and Science;

(c) where the recruitment is made to fulfil the backlog of reserve categories candidates.

7. The petitioner claims to have been appointed to teach Maths subject. The petitioner would be covered by the said judgment.

8. In the light of the above, the impugned order is quashed and set aside. The Education Officer shall consider the roster, availability of the post of Maths subject and other subjects at the time of appointment of the petitioner from the open competition category vis-a-vis the appointment of the petitioner, so also after considering qualification and other aspects shall take decision upon the same afresh expeditiously and preferably within a period of four (04) months from today. The proposal shall not be rejected only on the ground that permission of Education Officer was not obtained and that there are surplus candidates to be absorbed. The respondent/Education Officer shall also consider whether, there was surplus candidate for the same post or post

held by the petitioner.

9. In the light of the above, the writ petition is disposed of.
No costs.

[A. M. DHAVALA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Jan. 19