

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

30 WRIT PETITION NO.5251 OF 2018

SAMBHAJI NAGAPPA KHINDIWALE ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. Pratap G. Rodge, Advocate for the Petitioner.

Mr. S. M. Ganachari, AGP for Respondents-State.

Mr. P. G. Gunale h/f Mr. Satish S. Deshmukh
(Patnurkar), Advocate for Respondent Nos.3 and 4.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATED : 28th JANUARY, 2019.

PER COURT:-

1. The proposal seeking approval to the appointment of the petitioner as Shikshan Sevak is rejected basically on the ground that there is dispute in the management and that vacant post was not available.

2. We have heard Mr. Rodge, learned counsel for the petitioner, the learned A.G.P. and Mr. Gunale, learned counsel for respondent nos.3 and 4.

3. At the time the petitioner was appointed as per the staffing pattern placed on record before us, it appears that for 6th to 8th standard 3+1 posts were available. The petitioner claims to

have been appointed for 6th to 8th standard from S.T. category.

4. It appears that application was given on 23.09.2013 for filling in the posts, no response was received. The advertisement thereafter was issued on 17.11.2013 and the petitioner came to be selected and appointed on 19.01.2014. It is contended that proposal was submitted on 23.04.2014 and this is a third round of litigation before this Court.

5. The Education Officer certainly was required to consider whether proper procedure has been followed. It appears that after not receiving any response upon an application given by the management on 23.09.2013, advertisement was issued on 17.11.2013 and after selection process the petitioner was appointed on 19.01.2014. The impugned order only states two grounds, no.1 vacant post not available and no. 2. the dispute in management. Before us the said dispute amongst the members of the management has not been put forth by the respondent-institution. The petitioner belongs to S.T. category. The ban on recruitment would not apply. The earlier procedure appears to have been followed. The only question that would now be required to be considered by the Education Officer is about the availability of the vacant post as on the date the petitioner was appointed. If

subsequently the posts stand reduced, the action can be taken by the respondents in accordance with the relevant Government Resolution. However, while considering the proposal for approval, the position of the vacant post as on the date the appointment is made will have to be considered.

6. In light of the above, the impugned order is quashed and set aside. The respondent-Education Officer shall consider the proposal seeking approval to the appointment of the petitioner on the basis of the availability of the post as on the date the petitioner was appointed. The said decision shall be taken within a period of four months from today.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE