

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

WRIT PETITION NO. 5236 OF 2018

Vithal Gangadhar Puthewad .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

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

Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 1 to 3.

Shri Balaji S. Shinde, Advocate for the Respondent No. 4.

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

DATE : 20TH MARCH, 2019.

FINAL ORDER :

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

2. We have heard the learned counsel for the petitioner, the learned Assistant Government Pleader for respondent Nos. 1 to 3 and the learned counsel for the respondent No. 4.

3. The petitioner is appointed on 01.02.2012 as a Shikshan Sevak and thereafter is continued on 31.01.2015 as an assistant teacher after completion of probation period.

4. The reasons given for not approving the service of the petitioner are that, the appointment is not made as per the Government Resolution dated 06.02.2012. So also prior permission is not taken and the proposal is sent belatedly.

5. It appears that, the advertisement was issued. The petitioner belongs to the S. T. category. The petitioner also has validity certificate. The certificate of validity is produced by the petitioner. The case of the petitioner is covered under the judgment dated 10th July, 2017 decided at the Principal seat at Bombay in Writ Petition No. 8587 of 2016 with other connected writ petitions, wherein this Court has held thus :

"8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected

to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the State exchequer will be burdened.

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;

6. The procedure appears to have been followed. There also appears to be vacancy for the S. T. category. Considering the above, the impugned order is quashed and set aside. The

Education Officer shall reconsider the proposal of the petitioner seeking approval to the appointment of the petitioner afresh on its own merits and same shall not be rejected on the ground on which impugned order is passed. Same shall be decided expeditiously and preferably within a period of three (03) months from today. The writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

bsb / March 19