

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8311 OF 2018

RANJEET VYANKATRAO MADHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : MR. V. G. Kodale h/f. Mr.
Gunale V. D.

AGP for Respondents No. 1 & 2 : Mr. K. B. Jadhavar
Advocate for Respondents No. 3 & 4 : Mr. A. N. Sabnis

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WRIT PETITION NO. 8312 OF 2018

DATTA SHIVAJIRAO BONDGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : MR. V. G. Kodale h/f.
Mr. Gunale V. D.

AGP for Respondents No. 1 & 2 : Mr. K. B. Jadhavar

Advocate for Respondents No. 3 & 4 : Mr. A. N.
Sabnis

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WRIT PETITION NO. 8313 OF 2018

PRADEEPKUMAR BHIMRAO KULKARNI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : MR. V. G. Kodale h/f. Mr.
Gunale V. D.

AGP for Respondents No. 1 & 2 : Mr. K. B. Jadhavar
Advocate for Respondents No. 3 & 4 : Mr. A. N. Sabnis

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**CORAM: S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE: 07th JUNE, 2019

PER COURT:

1. In all these writ petitions the proposals submitted for seeking approval to the appointment of the petitioners are rejected.

2. We have heard the learned counsel for the petitioners, the learned A.G.P. and the learned counsel for the management.

3. It is not disputed that the management had given applications to the Education Officer seeking permission to fill in the posts. In writ petition no. 8311 of 2018, the application was given by the management seeking permission to fill in the posts on 20.06.2013 and 22.07.2013, whereas in writ petition no. 8312 of 2018 the applications were given seeking permission to fill in the posts on 22.07.2013 and 05.08.2014. In writ petition no. 8313 of 2018 the application was given seeking permission to fill in the posts on

21.07.2014. We had asked the learned A.G.P. as to whether the Education Officer has received the applications from the management. The learned A.G.P., on instructions, accepts that the applications were given by the management seeking permission to fill in the posts, however, the Education Officer had not granted permission. It appears that the Education Officer has not passed any orders on the applications given by the management and for four years sat over the applications. The advertisements were issued subsequently on 10.08.2013 and 05.08.2014, and thereafter the petitioners are appointed.

4. The petitioner in writ petition no. 8311 of 2018 is from Scheduled caste category and appointed to teach Science subject. The petitioner in writ petition no. 8312 of 2018 and 8313 of 2018 are appointed to teach English and Maths subject respectively.

5. It appears that for the first time in

November – 2018, the Education Officer directed absorption of surplus candidates with the respondent / institution. These petitioners were appointed four years prior to the same. For four years, no action was taken by the Education Officer. There is no reason coming-forth why the Education Officer did not act immediately upon receiving the applications and send the surplus candidates for absorption. The petitioners have also worked for four to five years.

6. The Division Bench of this Court at the principal seat at Bombay in writ petition no. 8587 of 2016 with connected writ petitions under order dated 10.07.2017 has observed as under -

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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 fulfill the backlog of reserve categories candidates;"

The said judgment is squarely applicable to the facts of the present case.

7. In the light of above, the impugned order is quashed and set aside. The Education Officer shall decide the proposals seeking approval to the appointment of the petitioners afresh and shall not reject it on the ground that there was ban on recruitment or that surplus candidates were available or that permission was not sought. The said proposals be decided expeditiously and preferably within a period of four (04) months from today.

8. The writ petitions are disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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