

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

WRIT PETITION No.10964 OF 2015

Yashpal s/o. Wamanrao Bhande. .. **Petitioner.**

Versus

The State of Maharashtra & Others. .. **Respondents.**

Shri. Amit S. Desphande, Advocate, for petitioner.

Shri. A.V. Deshmukh, Assistant Government Pleader, for
respondent No.1.

Shri. B.B. Dahiphale, Advocate holding for Shri. N.P. Patil
Jamalpurkar, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 25 FEBRUARY 2019

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed for challenging the order made by the Collector, Latur on the representation made by the petitioner to give him appointment on the post of Shikshan Sevak in the local body viz respondent No.2. Relief is also claimed for giving direction against the respondents to see that he is absorbed on such post. Both the sides are heard.

2) The submissions made and the record show that on 29-8-2005 the local body took a decision to appoint some candidates on the posts of teachers in the schools of the local body which was Nagar Parishad at the relevant time. It was resolved that candidates who were ready to work only for the sake of experience and without taking any pay can be appointed on these posts. On the basis of this resolution the petitioner came to be appointed on the post of Shikshan Sevak in a school of the local body. No advertisement was published for filling this post though some posts were vacant at the relevant time. In the year 2008 recommendation was made by the local body to the District Collector to give regular appointment to the petitioner and two other teachers appointed in similar way on the posts of Shikshan Sevak. The Collector wrote to the Education Officer (Primary) to give priority to these three teachers at the time of giving regular appointment. As regular appointment was not given the petitioner filed Writ Petition No.1251/2010 in this Court. In that proceeding this Court gave direction to the respondents to take decision on the representation made by the petitioner for regularization. The petition was disposed of by giving

such direction. The Collector took the decision after one more direction given by this Court in Writ Petition No.2384/2014 and rejected the representation by giving reason that no due procedure prescribed for appointment was followed.

3) Learned counsel for the petitioner submitted that there were 10 posts vacant and the local body was in need of such teachers and so appointment was given. It was submitted that it is the policy of the Government to regularize such appointment and for that many Government Resolutions in respect of different Departments were issued and on the same line the services of the present petitioner can be regularized. This contention is not at all acceptable. The record shows that persons who were in power in the Municipal Council at the relevant time simply passed resolution and appointed three persons of their choice on the posts of Shikshan Sevak. Such posts in the local body need to be filled by giving equal opportunity to all eligible candidates. If that is not done then such appointment is in violation of Articles 14,16 and 309 of the Constitution of India. It can

be said not it is not only the appointment in breach of the constitutional directions but it is highhandedness on the part of the persons who were in power at the relevant time. Even the State cannot regularize such appointment by using power given under Article 162 of the Constitution of India. The Apex Court has come heavily on such appointments in the cases reported as **(2004) 7 SCC 12 (A. Umarani v. Registrar, Cooperative Societies)** and **(2006) 4 SCC 1 (State of Karnataka v. Umadevi (3))**. In view of the circumstances, this Court holds that it is not possible to grant the relief claimed. In the result, the petition stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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