

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

77 WRIT PETITION NO.10220 OF 2018

ASHA SHIVAJIRAO PATIL AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. V. S. Panpatte, Advocate for the Petitioners.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

Mr. Amarjeet V. Patil, Advocate for Respondent
Nos.4 to 6.

Mr. U. B. Bondar, Advocate for Respondent No.3.

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

DATED : 04th JUNE, 2019.

PER COURT:-

1. The contention of petitioners is that petitioners are appointed after following due process. Their proposal for approval is rejected on the ground that the appointment is during the ban period and there are surplus teachers.

2. According to petitioners the institution had given application seeking permission to advertise the post and after waiting for almost six months the advertisement has been given and petitioners are appointed.

3. Mr. Bondar, learned counsel for Education Officer submits that the appointment of the petitioners is during the ban period. There are

surplus teachers required to be absorbed. No error has been committed while passing the impugned order by the Education Officer.

4. The contention of the petitioners is that on 05.12.2011 and 12.09.2011 applications were given to advertise the post as persons working on the said posts had retired. We had asked Mr. Bondar, learned counsel for the Education Officer as to whether the office of the Education Officer has received applications given by the Institution dated 12.09.2011 and 05.12.2011 seeking permission to advertise the post. Mr. Bondar, learned counsel on instructions accepts that the said applications have been received by the office of the Education Officer.

5. Though the applications were received by the Education Officer, the Education Officer did not respond and almost after 6 and 7 months the advertisements were issued in Daily Lokmat dated 20.05.2012 and Daily Sakal dated 15.05.2012. It was inaction on the part of the Education Officer in not forwarding the surplus teachers to be absorbed with the respondent-Institution, though it was brought to his notice that the posts are vacant and the permission is sought to fill in the said posts. Pursuant to the advertisement petitioners had applied and are selected and appointed on 16.06.2012, 02.07.2012 and 15.06.2012 respectively.

6. On one hand the Education Officer did not forward the surplus candidates for more than two years to the respondent-Institution, though the applications were received by him. The applications were specific about the post being vacant.

7. The institution could not have kept posts vacant for such a long period. That would have been loss to the students.

8. Considering all the aforesaid aspects, the impugned order is quashed and set aside. The respondent-Education Officer shall reconsider the proposal seeking approval to the appointment of petitioners afresh and shall not reject it on the ground that at the relevant time there was ban on the recruitment and surplus teachers were required to be absorbed. The same shall be decided within a period of four months.

9. Writ Petition is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE