

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
51 WRIT PETITION NO.407 OF 2019**

SHEETAL SHRIPAD JOSHI

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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

Mr. P. S. Patil, AGP for Respondents-State.

Mr. Raj Devdhe Patil h/f Mr. Shailesh P. Brahme and
Mr. A. R. Sayed, Advocate for Respondent Nos 3 and
4.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 02nd MARCH, 2020.

PER COURT:-

1. The proposal seeking approval to the appointment of the petitioner as Shikshan Sevak is rejected. Aggrieved thereby, the present petition.

2. The learned counsel for the petitioner submits that the permission was granted by the Education Officer on 30.12.2013 to fill in one post of Science subject and one post of English subject from Open category. After the permission is granted advertisement is issued on 05.01.2014. The petitioner is selected and appointment order is issued to the petitioner on 01.02.2014 for Science subject. The proposal is rejected basically on the ground that the procedure as per Section 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act is not followed and the backlog of S.T. category candidate exist. The learned counsel submits that the roster verified in

the year 2010 shows that there were two posts of Scheduled Tribe vacant, those have been filled in in the year 2011. Reliance is placed on the seniority list to contend that the persons at Serial No.68 and 70 were appointed in the year 2011 from the S.T. category.

3. The learned counsel submits that the roster was considered while granting permission to fill in the post. The roster is again verified in the year 2015 and 2019 wherein posts for S.T. category is not shown vacant. There is no backlog of S.T. category candidate nor any reserved category candidate.

4. Mr. Patil, learned A.G.P. submits that the proper procedure does not appear to have been followed. There is backlog of two posts of S.T. candidate, the same has been considered by the Education Officer.

5. We are not aware whether the copy of the roster placed before us was before the Education Officer while passing the impugned order. Prima facie, roster verified in the year 2010 shows two posts vacant for S.T. category candidates. The persons at Serial No.68 and 70 of the seniority list shows that those persons are appointed on 01.01.2011 and 05.1.2012 from S.T. category as Shikshan Sevak and Arts teacher respectively.

6. Further roster is placed on record of the year 2015 and 2019. The relevant position would be

as on the date the petitioner was appointed. The petitioner was appointed for Science subject. The permission appears to have been granted by the Education Officer to fill in the post of Science subject from the Open category candidate under its communication dated 05.01.2014.

7. When the permission is already granted the advertisement is issued and thereafter appointment order is given that would show the procedure under Section 5 being adhered to.

8. As far as roster is concerned, the Education Officer should have satisfied himself of the roster and subsequent appointments made.

9. In light of that, 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 and shall not reject it only on the ground of non-adherence to Section 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act. It may consider the roster that is already placed on record. The same shall be decided within a period of four (04) months.

10. Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE