

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

**WRIT PETITION NO. 11985 OF 2019
WITH
CIVIL APPLICATION NO.5267 OF 2020 IN WP/11985/2020**

Sarika Ganesh Joshi

... Petitioner.

Versus

The State of Maharashtra
and others

... Respondents.

....

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

Mr. K.N. Lokhande, A.G.P. for State.

Mr. P.S. Dighe, Advocate for Respondent Nos. 2, 3 and 4.

....

**CORAM : RAVINDRA V. GHUGE AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 27th AUGUST, 2020

PER COURT:-

1. We have heard the learned Advocate for the petitioner / applicant, the learned A.G.P. on behalf of respondent no.1 and the learned Advocate on behalf of respondent nos. 2, 3 and 4.
2. For the reasons set out in the application, the same is allowed and the certificate intimating that the petitioner has passed her TET examination, is taken on record.
3. Our attention is drawn to an order dated 09.10.2018 passed by this Court in Writ Petition No.11659 of 2016 filed by Seema Shitalnath Gomate and another Vs. The State of Maharashtra and others. We find that paragraph nos. 5, 6 and 7 are germane to the present case and are reproduced as under:-

“5. We have considered the submissions. It was brought to the notice of the Education Officer that two posts of the Assistant Teachers had become vacant on account of retirement of two Senior teachers. The same was brought to the notice under application 31.07.2012 and 30.06.2013. The Education Officer did not respond to the applications. Subsequently advertisement is given. Even the Education Officer has communicated to the Deputy Director that the Institution has absorbed surplus candidates and sought guidance for deciding the proposal of the petitioners.

6. We specifically asked the learned counsel for the Education Officer that whether during this period the surplus teachers were sent for absorption to the Institution. The learned counsel on instructions submits that only one teacher was sent for absorption to the Institution and the Institution has absorbed the surplus teacher. The said surplus teacher is sent in the year 2016. Apart from sending one surplus teacher that has been absorbed by the Institution, the Education officer did not refer any other surplus candidates for absorption with the institution. The post had become vacant on 31.07.2012 and 30.06.2013 respectively. For all these years the post could not have been kept vacant. Whenever surplus candidates are directed to be sent to the respondent Institution, the institution has absorbed them.

7. Considering the aforesaid aspect of the matter, the impugned order is quashed and set aside. The Education officer shall reconsider the proposal seeking approval to the appointment of the petitioner on its own merits and in accordance with law and policy and shall not reject only on the ground on which the impugned order is passed.”

4. The learned Advocate appearing on behalf of the Zilla Parishad submits that the petitioner has made out a good case in view of the certificate of passing of TET examination. As such, this petition can be

disposed off since the impugned order does not survive and the Education Officer would pass an appropriate order expeditiously.

5. In view of the above, this petition is partly allowed. The impugned order dated 16.08.2019 is quashed and set aside. Respondent No.2, Education Officer (Primary), Zilla Parishad, Dhule is directed to consider the marks memo placed on record by the petitioner and pass an appropriate order as regards the approval to her appointment as Shikshan Sevak and as an Assistant Teacher, on or before 15.09.2020.

(SHRIKANT D. KULKARNI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE