

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

WRIT PETITION NO.7926 OF 2019

Shivkumar S/o Santukrao Honrao,
Age-33 years, Occu:Service,
At present acting as "Assistant Teacher",
in Shri. Shivaji Vidhyalaya, Ranjangaon(S.P.),
Tq-Gangapur, Dist-Aurangabad

...PETITIONER

VERSUS

The State of Maharashtra,
Through it's Secretary,
School Education & Sports Department,
Mantralaya-32
and others.

...RESPONDENTS

...
Mr.Ramesh I. Wakade Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondents No. 1 to 5.
Mr.Kalyan Patil Advocate for Respondents No. 6 and 7.
...

**CORAM: SUNIL P. DESHMUKH AND
M.G. SEWLIKAR, JJ.**

DATE : 26th NOVEMBER, 2020

ORDER :

1. Heard learned counsel Mr. Wakade appearing for petitioner,
learned AGP Mr. Dande for respondents No. 1 to 5 and learned
counsel Mr. Kalyan Patil appearing for respondents No. 6 and 7.

2. There is no dispute on factual position that on account of retirement of erstwhile employee, post of shikshan sevak had fallen vacant on 30th June, 2013 and as such the management – respondents No. 6 and 7 had sought permission from the education officer for publication of advertisement to fill up the post. The permission accordingly is stated to have been accorded and an advertisement had been published on 16th June, 2013. Pursuant to the same, petitioner and others had applied and were interviewed and petitioner came to be selected and has been appointed as *shikshan sevak* under an order dated 1st July, 2013. In October, 2013 proposal for approval to said appointment had been sent by respondent No. 6, however, it was not responded to. Petitioner had successfully completed probationary period. Revised proposal accordingly had been sent to respondent No. 5. However, on this occasion it appears that the proposal has been turned down by the education officer, referring to the government resolution dated 2nd May, 2012.

3. Learned counsel Mr. Wakade submits that the reasons which went into rejection of approval to petitioner's appointment are untenable for more reasons than one. In the first place, it will have to be noted that petitioner is occupying a post which is meant for reserved – OBC category and there is no dispute that

petitioner belongs to that category. He further adverts to that during all this period from 2013 to 2019 it is not the case that any surplus employee had ever been referred to the management for absorption. He further refers to that cognizance of government resolution of 2nd May, 2012 has been taken by the division bench at Principal Seat of this court, in decision dated 10th July, 2017 in writ petition No. 8587 of 2016 (*Smt. Munoli Rahashri Karabasappa vs. State of Maharashtra and others*) and connected writ petitions, wherein it has been observed thus:

“ 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 fulfil the backlog of reserve categories candidates. ”

4. Learned counsel for the petitioner fairly refers to a decision of the division bench of this court at Aurangabad dated 21st March 2018 in writ petition No. 7528 of 2017 (*Kum. Nisha d/o Bapurao Dhobale vs. The State of Maharashtra and others*), wherein as well similar

situation had arisen and while the division bench had set aside the impugned order, the education officer had been directed to decide the proposal seeking approval to the appointment afresh, on its own merits, with the rider that not to reject the same on the ground on which earlier it was rejected.

5. Having regard to aforesaid, we deem it appropriate to follow the suit in present writ petition as well.

6. Accordingly, impugned order is set aside. The proposal for approval to appointment of petitioner stands revived for decision afresh on merits and would not be liable for rejection on the grounds on which earlier it has been turned down. Fresh decision be taken by the education officer within a period of six weeks from the date of receipt of writ of this order.

7. Writ petition is accordingly disposed of.

[M.G. SEWLIKAR, J.]

[SUNIL P. DESHMUKH, J.]