

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

44 WRIT PETITION NO.11870 OF 2019

VINOD RAMESH PURI AND ANOTHER ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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

Mr. S. G. Karlekar, AGP for Respondents-State.

Mr. Irfan D. Maniyar, Advocate for Respondent Nos.3 and 4.

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

DATED : 12th FEBRUARY, 2020.

PER COURT:-

1. Mr. Panpatte, learned counsel submits that before issuing the advertisement the management had intimated the vacancy being created because of retirement of one Mr. Laxman Mehtre. The letter was given by the Headmaster to the Education Officer on 18.09.2013. Thereafter, advertisement was issued on that 01.02.2014 and 01.01.2014. The petitioners are appointed to teach English subject. The petitioner no.1 is from NT-B category. The learned counsel submits that ban on recruitment would not apply to the persons appointed to teach English subject and for reserved category candidates.

2. The learned counsel relies on the judgment of the Division Bench at Principal Seat in Writ Petition No.8587/2016 with connected writ petitions dated 10.07.2017. The learned counsel submits that the institution has already absorbed two surplus candidates. Two posts are still vacant.

3. The learned A.G.P. submits that petitioners ought to have sought permission from the respondent-Authority for filling the posts. There are large number of surplus candidates available that are to be absorbed. The procedure under Section 5 has not been followed.

4. It appears that the institution had communicated the respondents-authority that one post would become vacant on 31.12.2013 upon retirement of Mr. Laxman Mehtre. The same was communicated under letter dated 18.09.2013.

5. The contention of petitioners is that two surplus candidates are absorbed. There are two posts still vacant. The respondents can send the surplus candidates for absorption to the respondent-school. On one hand respondents contend that there are surplus candidates to be absorbed and on other hand even though the vacant posts are notified, the surplus candidates are not sent for absorption to the respondent institution.

6. The Division Bench of this Court at Principal Seat in Writ Petition No.8587/2016 has observed thus:

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 fulfill the backlog of reserve categories candidates;

7. In light of the above, the impugned order is quashed and set aside.

8. The Education Officer shall reconsider the proposal seeking approval to the appointed of the petitioners on its own merits, preferably within a period of four (04) months and shall not reject it on the ground on which the impugned order is passed.

9. Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE