

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8665 OF 2019

Shri. Mahesh Nivrutti Suryavanshi ... Petitioner
Vs.

The State of Maharashtra, Through
the Secretary, School Education & Sports
Department & Ors. ... Respondents

Mr. Prashant Bhavake for the Petitioner.
Mr.V.M. Mali, AGP for Respondents No.1 to 5-State.
Mr. Prashant Jadhav i/by S.S. Tambekar for Respondent No.5.
Mr. Utkarsh Desai for Respondents No.6 and 7.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**

DATE : 29TH NOVEMBER, 2021

P.C. :

1. Rule. Rule made returnable forthwith. Mr. Mali, learned AGP for Respondents No.1 to 5-State waives service. Mr. Jadhav, learned counsel for Respondent No. 5 and Mr. Desai, learned counsel for Respondents No.6 and 7 also waive service.

2. By consent of the parties, Petition is heard finally.

3. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 8th April, 2019 passed by the Education Officer, thereby rejecting the proposal submitted by Respondents No.6 and 7, seeking individual approval to the appointment of the Petitioner in the post of Shikshan Sevak at the Respondent No.7-Primary School and for other reliefs.

4. The Petitioner is B.A., D.Ed. by qualification and also passed the Teachers Eligibility Test. The Petitioner belongs to OBC category.

5. It is the case of the Petitioner that due to the retirement of Assistant Teacher Smt. Madhuri Krishnaji Chougale on 30th September, 2013, one post of Shikshan Sevak was lying vacant at Respondent No.7-Primary School, with effect from 1st October, 2013. Respondent No.6 accordingly published an advertisement in the daily newspaper "Muktnayak" on 13th September, 2013 inviting applications for the post of Shikshan Sevak at Respondent No.7-Primary School. The Petitioner responded to the said advertisement and applied for appointment on the said post. On 25th September,

2013, the school committee of Respondent No.7 selected the Petitioner for the said post and passed the requisite Resolution in that regard.

6. On 1st October, 2013, Respondent No.6 appointed the Petitioner on the said post of Shikshan Sevak at Respondent No.7- Primary School. The Management, thereafter, submitted a proposal for the individual approval to the appointment of the Petitioner on 22nd March, 2019 on the post of Shikshan Sevak to the Education Officer. On 8th April, 2019, the Education Officer rejected the said proposal submitted by the Management for appointment of the Petitioner on the said post of Shikshan Sevak. The Petitioner thus filed this Petition.

7. Mr. Bhavake, learned counsel for the Petitioner invited our attention to some of the exhibits annexed to the Petition including the impugned order. It is submitted by the learned counsel that there was no creation of new post after 2nd May, 2012. The Petitioner was appointed on the post lying vacant after 2nd May, 2012, having been qualified and fulfilling all other conditions. Learned counsel also draws our attention to the roster and would submit that at the relevant time, there were four posts vacant in the

open category. Though, the Petitioner belongs to OBC category, the Petitioner was appointed on the said post on merits. The appointment of the Petitioner was made after publication of the advertisement and after following requisite procedure for Shikshan Sevak. It is submitted that the reliance placed by the State Government on the judgment of this Court delivered on **10th July, 2017** in the case of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra, Thru. Secretary & Ors. in Writ Petition No.8587 of 2016 with connected Writ Petitions** is misplaced. This Court in the said judgment has not held that even if the post has fallen vacant after 2nd May, 2012 and no new post is created, no appointment can be made under the said Resolution dated 2nd May, 2012.

8. In our view, since this post, on which the Petitioner was appointed, was vacant due to retirement of another Assistant Teacher on 30th September, 2013, the Petitioner having been qualified, after following the requisite procedure, was duly appointed on 1st October, 2013. The impugned order passed by the Education Officer rejecting the proposal submitted by the Management is thus totally erroneous and bad in law. We, accordingly, pass the following order.

9. The Writ Petition is allowed in terms of prayer clause (b).

10. The Education Officer is directed to grant approval for the appointment of the Petitioner to the post of Shikshan Sevak as well as post of the permanent Assistant Teacher from the initial date of appointment, within four weeks from today and shall release salary/ honorarium payable to the Petitioner with its all arrears within a period of four weeks from the date of granting approval.

11. Rule is made absolute in the above terms. No order as to costs.

12. Parties to act on the authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)