

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

909 WRIT PETITION NO.5314 OF 2022

DEEPALI VITHALRAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Mr. V. C. Patil (Ashtekar), Advocate for the petitioner
Mr. S. G. Karlekar, AGP for respondent/State

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**CORAM : RAVINDRA V. GHUGE
AND
ANIL L. PANSARE, JJ.
DATE : JUNE 21ST, 2022**

PER COURT : -

1. The petitioner has put forth prayer clause 'B', 'C' and 'D' as under : -

“B] By issuing any appropriate writ, order of direction in the like nature, the Respondent No.3/The Education Officer (Primary), Zilla Parishad, Nanded may kindly be directed to decide the proposal dated 28.03.2022 submitted by the Respondent No. 5 for grant of approval in favour of the Petitioner as Shikshan Sevak.

C] Pending hearing and final disposal of this writ petition, the Respondent No. 3 may kindly be directed not to send any surplus teacher to the Respondent No.4 and 5 School where the Petitioner is working as Shikshan Sevak.

D] Pending hearing and final disposal of this writ petition, the Respondent No. 3 may kindly be directed to decide proposal dated 28.03.2022 submitted by the Respondent No. 5.”

2. The learned AGP has rightly pointed out that the proposal for approval of the petitioner's appointment made for one academic year 2019-2020 is served upon the Education Officer (Primary) on 28.03.2022 and this petition is filed within seven days on 04.04.2022. We express our displeasure on the filing of this petition for the reason that the writ of mandamus is to be invoked when all available statutory remedies are exhausted and yet the grievance is not redressed. Several petitioners like the present petitioner rush to this Court only to seek directions and this petition is a classic example, having been filed within seven days seeking a direction for a decision.

3. Insofar as prayer clause 'C' is concerned, the same is against the tenets of law. A surplus teacher in service is obviously approved and gets the first right in absorption. Any fresh appointment made without accommodating a surplus teacher cannot be approved.

4. In view of the above, this petition is **disposed off**. Now that three months have lapsed, we would expect respondent no. 3 to consider the proposal of the petitioner strictly in accordance with the rules applicable and if no prior permission of the Education Officer for making new recruitment is taken or if surplus teachers are available and yet the management has made the recruitment of the petitioner, though for one academic year, the Education Officer would be within his jurisdiction in rejecting such application.

5. The learned AGP is requested to call upon respondent no. 2 to convey this order to respondent no. 3.

[ANIL L. PANSARE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE