

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

WRIT PETITION NO.9301 OF 2021

Neeta D/o Mahadeo Kendre,
Age : 31 years, Occu. Assistant Teacher,
R/o Swa. Sawarkar Secondary School,
Beed, Tq. and District Beed. ... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, District Mumbai.
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
3. The Education Officer (Secondary),
Zilla Parishad Beed, District Beed.
4. The Secretary,
Bhartiya Shikshan Prasarak Sanstha,
Ambejogai, Tq. Ambejogai, District Beed.
5. The Head Master,
Swa. Sawarkar Secondary and
Higher Secondary School, Beed
Tq. and District Beed. ... **Respondents**

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Advocate for Petitioner : Mr. R. J. Godbole.
AGP for Respondents-State : Mrs. M. A. Deshpande.
Advocate for Respondent Nos.4 & 5 : Mr. V. B. Narke.

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**CORAM : R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

DATE : 10.03.2022

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

1. Rule. Learned AGP waives service of notice for respondent Nos.1 to 3. No reliefs are sought against Respondent Nos.4 and 5 who are formal parties. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for various reliefs including the prayer to re-consider the proposal of respondent-Management dated 02.08.2021 and to accord and approval in favour of the petitioner against aided post in the school namely Swa. Sawarkar Secondary and Higher Secondary School, Beed, Tq. and District Beed.

3. Mr. Godbole, learned counsel for the petitioner invited our attention to the Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and also the information received by the petitioner from the Superintendent Pay and P. F. Unit under the Provisions of Right to Information Act stating that 42 posts are still lying vacant.

4. It is submitted that in view of this position, respondent Nos.2 to 3 shall be directed to re-consider the decision after considering the effect of Rule 41-A of the M.E.P.S. Rules and also the information received by the petitioner under the Right to Information Act annexed at page Nos.47 and 48 of the petition.

5. Learned AGP for the Respondents-State does not dispute the correctness of the information supplied to the petitioner annexed at page Nos.47 and 48 of the petition and also that Rule 41-A is inserted in the M.E.P.S. Rules.

6. In view of the amendment filed by virtue of the 41-A of the M.E.P.S. Rules and in view of the information received by the petitioner under Right to Information Act, the impugned decision taken by the respondent Nos.1 and 2 will have to re-consider in accordance with law.

7. We accordingly pass the following order :

- (i) The impugned order dated 04.08.2021 annexed at Exh-A to the petition is quashed and set aside.

(ii) The proceedings are restored before the Education Officer (Secondary), Zilla Parishad, Beed for re-consideration after taking into consideration the effect of Rule 41-A and the information supplied to the petitioner annexed at page Nos.47 and 48 of the petition. The order that would be passed shall be passed without being influenced by the observations made and conclusions drawn in the impugned order which is quashed and set aside by this order and shall be decided in accordance with law. If the order is in favour of the petitioner, the consequential benefits shall be granted to the petitioner within a period of four (4) weeks from the date of such order. If the order is adverse against the petitioner, the petitioner would be at liberty to file appropriate proceedings.

(iii) No order as to costs.

(iv) Parties to act on the authenticated copy of this order.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

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vmk/-