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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1997 OF 2015**

Vishnu Pundalik Patil	]	Petitioner
Vs.		
State of Maharashtra	]	
School Education and Sports Department]		
Mantralaya, Mumbai Through its	]	
Principal Secretary and others.	]	Respondents

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Ms. M.S. Topkar a/w Ms. Parita Manesh, for Petitioner.

Ms. Ranjana Todankar, for Respondent No.5.

Mr. S.B. Kalel, A.G.P, for Respondent – State.

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**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 16th MARCH, 2022.

P.C.

1. Heard.
2. Rule. Rule is made returnable forthwith. Heard finally by consent of learned Counsel for the parties.
3. The only ground stated in the impugned order dated 14th January, 2010 for refusing approval is that backlog of 11 reserved posts was existing. The ground implied that unless the backlog of

the reserved candidates was cleared, no candidates from open category could be appointed on open post. But, the learned Single Judge of this Court in case of **The President, Sudhagad Education Society, Dist. Raigad and others Vs. The Deputy Director of Education and another**, in Writ Petition No.4635 of 2009 together with connected matter decided on 16th July, 2009 had taken a view that approval to the appointment made by a School on open post cannot be refused on the ground that backlog of the reserved category candidates was not filled in. Such a view has been taken by the learned Single by following a view taken in several other Writ Petitions. The observations of the learned Single Judge could be found in paragraph 10 of the judgment.

4. The judgment of the learned Single Judge in the case of **Sudhagad Education Society, Dist. Raigad and others** (supra), was confirmed by the Division Bench of this Court in its judgment dated 5th May, 2020 in **Letters Patent Appeal No.63 of 2010 (The Deputy Director of Education and another Vs. Hemant Kishan Gavale and others)** and other connected matters. It got further confirmation when the Apex Court dismissed petition for Special Leave to Appeal (Civil) CC 5482-5483/2011 on 26th April, 2011. Therefore, we are of the view that there is no reason for us to strike a different note on the issue.

5. In view of the above, we are of the opinion that the impugned order cannot be sustained in the eye of law. The petition deserves to be allowed. Hence, the following order.

: ORDER :

- (a) The petition is allowed in terms of prayer clause (a);
- (b) The impugned order is hereby quashed and set aside;
- (c) Salary together with arrears shall be released to the petitioner within a period of four weeks from the date of receipt of copy of this order;
- (d) Rule is made absolute in the above terms. No costs.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]