

Dusane

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

WRIT PETITION NO.4950 OF 2017

Ashwini Nitin Mhatre	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

**WITH
WRIT PETITION NO.4946 OF 2017**

Rajshree Govind Mhatre	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Ajay Basutkar for Petitioners in both Petitions.
Mr. S.B. Kalel, AGP for State - Respondent Nos. 1 to 3 in both Petitions.
Mr. Neel Helekar for Respondent Nos. 4 and 5 in both Petitions.

**CORAM : S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : 18TH AUGUST 2022

P.C. :

1. The Petitioners were appointed by the Management. The Petitioner in Writ Petition No. 4950 of 2017 is appointed on 15th September 2012

and the Petitioner in Writ Petition No. 4946 of 2017 is appointed on 9th July 2013. The advertisement was issued. Pursuant to the advertisement, the Petitioners applied and after the selection process, these Petitioners are appointed. Their proposals are rejected on the ground that surplus candidates were available and the Management was required to absorb the surplus candidates, Section 5 of the MEPS Act has not been followed.

2. In the order of the Education Officer, it transpires that there were about 177 teachers surplus in Raigad district and as per Section 5(1), the surplus teachers were required to be absorbed first.

3. Learned counsel for the Petitioners submits that the Petitioners were appointed by following due legal process on vacant posts, as per the roster, the post were available.

4. Learned counsel for the Management submits that today also 22 teaching posts in the Respondent-School are vacant. All along the posts are vacant, the Petitioners are appointed on vacant posts and as per roster.

5. Learned AGP submits that as Section 5 of the MEPS Act has not been

followed and adhered to. No error has been committed by the Education Officer, the Education Officer has rightly rejected the proposal seeking approval to the appointment of the Petitioners.

6. The proposal of the Petitioners is basically rejected on the ground that there are surplus teachers available and the Management was required to absorb the surplus teachers.

7. The advertisement is placed on record. The copy of the application given to the Education Officer for seeking permission for filling the post is not on record.

8. The Education Officer has issued a letter and produced by the Petitioners dated 26th October, 2021 to the effect that as per the staffing pattern for 2018-2019, there is not a single B.Ed. or D.Ed. teacher surplus.

9. According to the Petitioners and the institution, the Petitioners' possess the necessary qualifications. Both are BEd and DEd and are appointed as per the staffing pattern and the roster.

10. Considering the letter of the Education Officer dated 26th October 2021 to the effect that since the year 2018-2019 not a single surplus teacher post exist in Raigad district and also considering that the Petitioners were working since the year 2012-2013 continuously, we deem it appropriate to pass the following equitable order :

O R D E R

(I) The Education Officer shall consider granting approval to the appointments of the Petitioners from the academic year 2018-2019 i.e. since June 2018.

(II) The Petitioners shall be granted approval from June 2018 as Shikshan Sevak, as it is said that they are appointed on 100% grant-in-aid posts for a period of three years and thereafter as an Assistant Teachers.

(III) The Petitioners shall be entitled for salary only from 1st September 2022 of Assistant Teachers.

(IV) The Petitioners have undertaken not to claim the honorarium or salary of the Assistant Teachers till the end of August 2022.

(V) We have passed the aforesaid order as the letter has been issued by the Education Officer to the effect that no surplus teacher post exists from academic year 2018-2019 in Raigad district and also that the advertisement was issued by the Management, the selection process was followed.

(VI) The Education Officer shall consider grant of approval to the Petitioners within a period of one month.

(VII) The Writ Petitions are disposed of.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)

BHALCHANDRA
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