

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 105 OF 2017

DIST. : JALNA

Nagesh s/o Shankarrao Mapari,)
Age. 39 years, Occu. : Service,)
R/o Bhagyanagar, Jalna,)
Tq. & Dist. Jalna.)

-- **APPLICANT**

VERSUS

- 1) The State of Maharashtra,)
Through Principal Secretary,)
School Education & Sports)
Department, Mantralaya,)
Mumbai.)
- 2) Maharashtra Public Service)
Commission, through its)
Secretary, Bank of India Building,))
Hutatma Chowk, Mumbai.)
- 3) Shri Hambirrao Sampt Jagtap,)
Age. Major, Occu. : service,)
R/o Vimal Royal City,)
Plot no.A/7, Radhika Road,)
In front of Yashwant Troma Center,))
Dist. Satara.)
- 4) Shri Hanamant Vitthal Jadhav,)
Age. Major, Occu. – Service,)
R/o at sr. no. 86/B, Flat no. 17,)
Golibar Maidan, Godoli,)
Dist. Satara.)
- 5) Shri Avinash Bhanudas Jagtap,)
Age. Major, Occu. Service,)
R/o at S/3, Madhukrushna Homes,))
Sr. no. 476/8, Sadarbazar,)
Dist. Satara.)

- 6) Namdev Dnyandev Dhanawade,)
 Age. Major, Occu. Service,)
 R/o at post Gavadi, Tq. Jaoli,)
 Dist. Satara.)
- 7) Shri Namdeo Pandurang Shindkar)
- 8) Shri Jayant Madhavrao Borse,)
- 9) Shri Laxman Mahadeo Pise,)
- 10) Shri Bhausahab Shivaji Karekar,)
- 11) Shri Ankush Gulabrao Shinde,)
- 12) Shri Balasaheb Kashinath Rakshe)
- 13) Smt. Damayanti Digambar Doke,)
- 14) Smt. Jyoti Narayan Parihar,)
- 15) Dr. (Smt.) Vaishali Dattatraya Zankar)

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RESPONDENTS

APPEARANCE : Shri Avinash S. Deshmukh with Shri G.N. Kshirsagar, learned Advocates for applicants.

: Shri M.P. Gude, learned Presenting Officer for the respondent nos. 1 & 2.

: Shri S.G. Kawade, learned Advocate for respondent Nos. 4, 5 & 10 (**absent**).

: None appears for respondent nos. 3, 6 to 9 and 11 to 15.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : **30.08.2021**

ORDER**(Per : Hon'ble Shri V.D. Dongre, Member (J))**

1. By invoking the jurisdiction U/s 19 of the Administrative Tribunals Act, 1985 the present Original Application is filed seeking directions against the respondents to issue appointment order to the applicant for the post of Education Officer, Maharashtra Education Service Group-A (Administrative Branch) from open competition category in view of the marks secured by him in the interview conducted by the respondent no. 2 – the M.P.S.C. – for the post of Education Officer advertised vide advertisement No. 2/2010 published on 21.10.2010.

2. The applicant is working as a Deputy Education Officer. He is qualified for appointment on the post of Education Officer Class-I. The respondent no. 2 – the M.P.S.C. – published an advertisement No. 2/2010 dated 21.10.2010 (Annex. A-1), thereby invited applications from the eligible candidates for filling in the 74 posts of Maharashtra Education Group-A (Administrative Branch). 74 out of the total advertised posts were left for open competition category (Open category).

3. It is the further contention of the applicant that as the applicant was having the requisite qualification for the post of Education Officer, he applied and participated in the selection

process including the written examination and oral interviews. The result of the written examination was declared on 16.2.20213. He was qualified in the written examination and was called for the interview. Annexure A-2 collectively is the result of the written examination / screening test and interview. The applicant secured 56 marks in the interview.

4. It is further submitted that in the meanwhile some of the candidates, who are joined as respondent nos. 3 to 15 and who appeared for screening / written examination pursuant to the advertisement No. 2/2010 filed O.A. nos. 906/2011 and 912/2011 before the principal seat of this Tribunal at Mumbai making the main grievance that certain questions were wrong and the assessment was made on certain key answers and in view of that they sought revaluation of the written / screening examination. Upon hearing the applicants therein (who are respondent nos. 3 to 15 in the present O.A.) and the respondents in those O.As., this Tribunal allowed the said O.As. and directed the respondents therein to reevaluate the marks obtained by the applicant nos. 4 and 9 in O.A. 906/2011 and the applicant nos. 2 & 3 in O.A. no. 912/2011 and thereafter add the marks obtained in interview and then accordingly place them in the merit list and if they are meritorious enough, they be considered for

appointment as Education Officer. The applicant nos. 4 and 9 in O.A. no. 906/2011 i.e. Shri Bhausahab Shivaji Karekar and Dr. Smt. Vaishali Dattatraya Zankar are respondent nos. 10 and 15 in the present O.A. The applicant nos. 2 & 3 i.e. Shri Hanmant Vitthal Jadhav and Shri Avinash Bhanudas Jagtap in O.A. no. 912/2011 are respondent nos. 4 and 5 in the present O.A. Copy of the judgment of this Tribunal in O.A. 906/2011 and 912/2011 dated 15.4.2013 is placed on record at Annexure A-3.

5. It is further submitted that being aggrieved by the said judgment dated 15.4.2013 delivered by this Tribunal in O.A. nos. 906/2011 and 912/2011, the respondent no. 2 – the M.P.S.C. – herein preferred a writ petition no. 5868/2014 before the Hon'ble High Court of Judicature at Bombay. Hon'ble High Court upon hearing both the sides dismissed the said writ petition by the judgment and order dated 29.2.2016 (Annex. A-4). Being aggrieved thereby, the respondent – M.P.S.C. – filed a review petition bearing St. No. 15617/2016 before the Hon'ble High Court. The Hon'ble High Court dismissed in default the said review petition by the order dated 10.8.2016. The status report in that regard is placed on record at Annex. A-5.

6. The applicant belongs to open competition category. He secured 56 marks in the interview conducted by the respondent –

M.P.S.C. The last candidate, who has been appointed on the post of Education Officer from open category in pursuance of the advertisement no. 2/2010 had secured 57 marks. Now to fill in one vacant post of Education Officer left for open competition category. The applicant is entitled for appointment on the post of Education Officer, since he is a aspiring candidate, who secured 56 marks. However, he has not been given appointment from open competition category.

7. The applicant persuaded his matter with the M.P.S.C. orally as well as by written application. The applicant also sought information under R.T.I. by making an application on 13.5.2016. The Under Secretary of the respondent no. 2 – the M.P.S.C. – by the reply letter dated 29.6.2016 (Annex. A-6) informed the applicant that Hon'ble M.A.T. had directed that the result of the said interview with regard to the applicant shall be kept in a sealed cover until further orders. That order was passed in O.A. no. 906/2011. It is, however, the contention of the applicant that Hon'ble M.A.T. has delivered final judgment in the said O.A. nos. 906/2011 with O.A. no. 912/2011 on 15.4.2013 (Annex. A-3). In the said judgment Hon'ble Tribunal has not directed the respondents to keep the posts vacant. During the course of hearing on 21.2.2013 in O.A. no. 906/2011 this Tribunal made it

clear that since the results of all the candidates had already been declared by the M.P.S.C., the M.P.S.C. was directed to declare the results of all the candidates, whose results were kept in a sealed cover by the order dated 21.2.2013 (wrongly stated as 28.2.2013).

8. In view of above, it is the grievance of the applicant that on one hand the respondent no. 2 – the M.P.S.C. – is denying to recommend the name of the applicant for selection against the post of Education Officer on the ground that Hon'ble Tribunal had not directed to keep the post vacant and the order passed by the Tribunal is under challenge before the Hon'ble High Court and on the other hand the respondent no. 2 – the M.P.S.C. – is not persuasive in prosecuting the writ petition pending before the Hon'ble High Court, thereby the applicant is deprived of his legitimate right in view of marks obtained by him in the interview conducted by the respondent no. 2 – M.P.S.C. Hence, the applicant has filed the present O.A.

9. Separate Affidavit in replies are filed on behalf of respondent no. 2 (page 52 of paper book) and respondent no. 1 (page 66), thereby they have denied the claim of the applicant. At the outset, the respondent nos. 1 & 2 contended that the present O.A. is barred by limitation. It is not disputed that the advertisement no. 2/2010 was published on 21.10.2010 for filling in 74 posts of

Education Officer in Maharashtra Education Group-A (Administrative Branch). After declaration of result of written / screening examination, some of the candidates, who were not qualified therein, filed different O.As. before the principal seat of this Tribunal at Mumbai on the ground of wrong questions and answers in the screening test. Hon'ble Tribunal disposed of the said O.As. On considering the orders passed by the Tribunal the M.P.S.C. declared the final result on 16.2.2013. However, the result of one open general post was withheld. The result of the said post is yet to be declared. The respondent no. 2 specifically has not disputed that they challenged the order of this Tribunal passed in O.A. nos. 906/2011 and 912/2011 before the Hon'ble High Court by filing writ petition nos. 5866/2014 and 5868/2014. However, the said writ petitions as well as the review petitions thereof have been dismissed by the Hon'ble High Court on technical grounds. Meanwhile, the respondent no. 2 - the M.P.S.C. - implemented the order of the Tribunal. However, after revaluation, the status of those candidates in the screening test was not changed and therefore they were not qualified for interview. They were, however, interviewed on the basis of interim orders of the Tribunal. It is further contended that whole selection process was carried out as per the prevailing rules and regulations. Final result and selection of the candidates was

made on the basis of marks secured by them in the interview only. The marks obtained by the candidates in screening tests were not considered for selection. So far, names of 73 candidates have been recommended long back in the year 2013 and 2014 on the basis of marks obtained by them in the interview only. It is further submitted that the respondent no. 2 - the M.P.S.C. recommended the name of applicant no. 9 - Dr. Smt. Vaishali Dattatraya Zankar - in O.A. no. 906/2011 (who is respondent no. 15 in the present O.A.) for consideration on the basis of marks obtained by her in the interview only. As per the contentions of respondent no. 1, however, she has been considered as 74th candidate and appointment letter was issued to her. Hence, according to respondent no. 1, all the 74 posts for which advertisement no. 2/2010 dated 21.10.2010 was issued, are filled in and there is no vacant post left. It is the contention of the respondent no. 2 - the M.P.S.C. - that withhold result of one open general post is under consideration of the M.P.S.C. As per the order of Hon'ble High Court, the marks of written / screening examination will have to be considered for final result of one open general post. However, marks obtained in written examination were not considered while preparing the final result already declared earlier based on which recommendation of a number of candidates have also been previously done. However, according to

respondent no. 1, specifically there is no any provision of creating additional post as mentioned in the letter dated 17.4.2017 of the respondent no. 2 – the M.P.S.C. In view of the same, the respondent nos. 1 & 2 prayed for dismissal of the present O.A.

10. Affidavit in reply is filed by the respondent nos. 4, 5 & 10 (page 59). They admitted regarding the O.As. filed by them and others bearing O.A. nos. 906/2011 and 912/2011 and the orders passed by this Tribunal therein and the subsequent litigation of writ petitions & contempt petitions before the Hon'ble High Court. They contended that Contempt Petition no. 18474/2017 filed by the respondent no. 4 is pending before the Hon'ble High Court. The respondent no. 4 is eligible for appointment on the vacant post. The applicant has not challenged the order of the Hon'ble High Court. Therefore, the applicant is not entitled for any post including the post, which is kept vacant. In fact, the respondent nos. 4 & 5, who are from open category, are more meritorious than the applicant. Therefore, the present O.A. deserves to be dismissed.

11. Rejoinder affidavit (page 78) is filed by the applicant to the affidavit in reply of respondent no. 1. According to the applicant, the respondent no. 1 has denied the claim of the applicant stating that the O.A. is barred by limitation and secondly as against the

demand of 74 candidates by the State Government, the M.P.S.C. has already recommended the names of 74 candidates, who are working on that all the posts of Education Officer in Group-A and resultantly there is no vacant post for appointment of the applicant. It is submitted that document at Annex. A-1 collectively (page 86) would show that the M.P.S.C. recommended the name of Dr. Vaishali Dattatray Zankar on 7.5.2016 and order of appointment was issued in her favour by the State Government in the month of December, 2017. The present O.A. is filed by the applicant on 2.7.2017 and in view of the same, it cannot be said that the present O.A. filed by the applicant is barred by limitation.

12. It is further submitted by the applicant that the communication dated 6.1.2018 (Annex. A-2 to rejoinder affidavit, page 94 of paper book) sent by the respondent no. 2 to this applicant would show that it is mentioned therein that the action regarding declaration of the result of one post of above category would be taken after conclusion of the pending judicial proceedings in relation thereto. In view of the same, it is clear that even in the year 2018 i.e. after filing of the present O.A., the matter concerning one post of open category from amongst the posts published in the year 2010 is still alive with the M.P.S.C. The noting of the M.P.S.C. (Annex. A-3 to rejoinder affidavit, page

95-96 of paper book) prepared in April, 2018 would fortify the said contention of the applicant. In view of the same, there is no substance in the contention raised by the respondent no. 1 – the State Government – in this regard. It is categorically admitted by the M.P.S.C. that though they initially recommended total 71 candidates, however, 3 candidates have not joined and 68 candidates joined on their respective posts. In addition to those 68 candidates, the M.P.S.C. recommended 5 more candidates bringing total number of candidates to 73. However, contrary to that the respondent no. 1 has raised the contention that considering the order passed by the Hon'ble High Court, the M.P.S.C. had recommended one more candidate on 7.5.2016 and as a result thereof, total number of recommended candidates had reached to 74, who were all given appointments, due to which there was no vacancy remained. However, the said contention is totally false and is made in suppression of material facts. This is because while raising the said contention by referring to the order of Hon'ble High Court, the respondent no. 1 very conveniently suppressed the fact that the order of Hon'ble High Court was concerning about Dr. Vaishaly Zankar, who was not only the candidate from O.B.C. category, but furthermore she was selected and recommended by the M.P.S.C. on the post earmarked for O.B.C. (female) category as seen from recommendation letter

dated 7.5.2016 (Annex. A-i). Apart there-from, the respondent no. 1 also suppressed the fact that after recommendation of name of Dr. Smt. Vaishali Zankar from O.B.C. (female) category when the matter was sent for the opinion of Law & Judiciary Department of the State Government inasmuch as all the 4 posts earmarked for O.B.C. female category were occupied and there was no vacancy to accommodate said Dr. Vaishali Zankar. Law & Judiciary Department, therefore, categorically opined that it was for the respondent no. 1 to explore all the possibilities for giving appointment to her like creating additional post or giving appointment in the quota meant for promotees or by creating supernumerary post. The said opinion is at Annex. A-4 to rejoinder affidavit, page 97-101 of paper book. Later on, Dr. Vaishali Zankar, as per copy of a communication submitted by the learned P.O., has been decided to be appointed against a supernumerary post created vide G.R. of शालेय शिक्षण व क्रीडा विभाग No. ससेप्र-४३०२/प्र.क्र.७०/प्रशा-२, दिनांक - २३ जुलै, २०२१ for period from 18.12.2017 to 16.12.2020 and thereafter against quota of O.B.C..

13. Affidavit in sur-rejoinder is filed by the respondent no. 1 (page 102). The respondent no. 1 reiterated the contentions as raised in the affidavit in reply and denied the adverse contentions raised by the applicant in rejoinder affidavit. For that purpose the

respondent no. 1 relied on the communication in between him and respondent no. 2.

14. As per the directions of this Tribunal vide order dated 13.3.2019, the respondent no. 2 – the M.P.S.C. – has filed additional affidavit (page 136). The respondent no. 2 contended thereby that initially out of total 74 published posts, recommendation of 73 posts was made and the result of one open (general) post is still remained to be declared. It is further contended that one of the candidate namely Dr. Vaishali Zankar was recommended as an additional candidate from O.B.C. (female) category in the year 2016 as a result of dismissal of writ petition no. 5868/2014 filed by the respondent – M.P.S.C. - against the combined order in O.A. nos. 906/2011 and 912/2011 passed by this Tribunal. It is submitted that there were 4 vacancies available for O.B.C. (female) category for which 4 candidates have already been recommended at the time of declaration of final result in the year 2013 and therefore, no post was available for recommending her name from O.B.C. (female) category, at the time of her recommendation. Obviously, the M.P.S.C. is bound to recommend her name as an additional one candidate. The respondent no. 2 has made communication dated 11.4.2018 with the respondent no. 1 placing on record that out of 74 published

posts, 73 regular and one additional candidates are recommended by the M.P.S.C. Proposal for declaration of result for remaining open general post was under consideration of the M.P.S.C. Therefore, it was asked to recommend the name of that candidate for any vacant post.

15. Thereafter additional affidavit in reply is filed by the respondent no. 1 (page 143) reiterating the contentions raised in affidavit in reply and sur-rejoinder. It is contended that posting of Dr. Vaishali Zankar may be considered as recommended 74 candidates irrespective of her category.

16. We have heard the arguments advanced by Shri Avinash S. Deshmukh, learned Advocate holding for Shri G.N. Kshirsagar, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent nos. 1 & 2, at length. Shri S.G. Kawade, learned Advocate for respondent Nos. 4, 5 & 10 (**absent**). None appears for respondent nos. 3, 6 to 9 & 11 to 15.

17. Learned Advocate for the applicant strenuously urged before us that from the affidavit in reply of respondent no. 2 – the M.P.S.C. – and the documents annexed thereto it is evident that out of 74 posts to be filled in from the open competition category, 73 posts have been filled in and one more post has been filled in as an additional post is of Dr. Smt. Vaishali Dattatraya Zankar,

who was from O.B.C. (female) category. However, out of said 74 posts, 4 posts were of O.B.C. (female) category and those 4 posts were already recommended and filled in and therefore one post is to be treated as an additional post as per the advice given by the Law & Judiciary Department. In view of that, the learned Advocate for the applicant submitted that one post of open category is still vacant and the appointment to that post can be given to the applicant even subject to litigation, if any, pending in respect of this recruitment.

18. As against that, learned P.O. for the respondent nos. 1 & 2 opposed the submissions advanced on behalf of the applicant and stated that all 74 posts advertised for open competition category were filled in as stated by the respondent no. 1 in their affidavit in reply and no post is vacant where the applicant can be appointed. He further submitted that still some of the matters belonging to said recruitment process are pending and therefore due care shall be taken while passing the final order in the present case. During the arguments he has placed on record copy of G.R. dated 23.7.2021 (page 194) issued by the School Education & Sports Department, Maharashtra State. As per the said G.R. the Government has given permission for creation of one supernumerary post during the period from 18.12.2017 to

16.12.2020. This G.R. was issued in view of the recommendations of the respondent no. 2 the M.P.S.C. to accommodate said Dr. Smt. Vaishali Dattatraya Zankar on the post of Education Officer.

19. We have already narrated the facts in detail as revealed from the rival pleadings of both the sides. Considering the same, it reveals that, the present matter revolves around 01 post out of 74 advertised posts for open competition category. The exact controversy is whether 74th post, which was filled in by giving appointment to Dr. Smt. Vaishali Dattatraya Zankar was of the social / horizontal reservation category of O.B.C. (female) category or it is belonging to Open category. In this regard, it would be useful to minutely refer to the affidavit in reply (page 52) and additional affidavit in reply (page 136) both filed by the respondent no. 2 - the M.P.S.C. - and the annexures annexed therewith. In both the replies it is explained by the respondent no. 2 - the M.P.S.C. - that the result of one open general post was withheld as per the interim order passed in pending O.A. Nos. 906/2011 and 912/2011 filed by some of the aggrieved candidates. The respondent no. 2 the M.P.S.C. in the said recruitment process long back in the year 2013-14 recommended 73 candidates on the basis of marks secured by them in the interview only. Subsequently in the final order passed by this Tribunal in O.A.

nos. 906/2011 and 912/2011 the respondent no. 2 the M.P.S.C. was directed to reevaluate the marks obtained by the applicant nos. 4 and 9 in O.A. 906/2011 and the applicant nos. 2 & 3 in O.A. no. 912/2011 and thereafter add the marks obtained in interview and then accordingly place them in the merit list and if they are meritorious enough, they be considered for appointment as Education Officer. The respondent no. 2 - the M.P.S.C. challenged the said order of this Tribunal before the Hon'ble High Court by filing writ petition nos. 5866/2014 and 5868/2014. However, both the said writ petitions were dismissed and the review petition preferred by the respondents was also dismissed and therefore the order of this Tribunal became final. The respondent no. 2 the M.P.S.C. thereafter considered and recommended one such candidate i.e. Dr. Smt. Vaishali Dattatraya Zankar (applicant no. 9 in O.A. 906/2011) on the basis of marks secured by her in the interview only as earlier 73 candidates were recommended on the basis of marks secured in the interview only.

20. Thereafter additional affidavit in reply is filed by the respondent no. 2 the M.P.S.C. (page 136) as per the directions given by this Tribunal in its order dated 13.3.2019. For the sake

of convenience, the relevant portion of para nos. 2 of the said order is reproduced below :-

“2. Upon hearing both the sides, it appears that the res. no. 2 the M.P.S.C. in its affidavit in reply dtd. 8.1.2018 in para 4 has submitted that, though the Commission has prepared final result, the result of one Open (General) post was withheld and the said result is yet to be declared by that time. The applicant has filed Annex. A. 3 page 95, which appears to be the submissions and noting of the office of res. no. 2 the M.P.S.C. He submits that these submissions and noting would show that the res. no. 2 is unnecessarily taking case of Smt. Zankar while taking decision regarding Open (General) category candidate’s selection, though she is from O.B.C. (Female) category.

3. In the circumstances, the res. no. 2 is hereby directed to take into consideration these facts and file an additional affidavit in reply explaining the further progress regarding withholding of the result and also make comment on the noting (Annex. A.3) in view of the submissions of the learned Advocate for the applicant as above. ”

21. Pursuant to that, it is clarified by the respondent no. 2 - the M.P.S.C. that later on one of the candidates i.e. applicant No. 9 in O.A. No. 906/2011 - Dr. Smt. Vaishali Dattatraya Zankar - was also recommended as an additional candidate from O.B.C. (female) category in the year 2016 upon dismissal of writ petitions filed by the respondent State against the order of this Tribunal passed in O.A. Nos. 906/2011 and 912/2011. It is submitted that there were 4 posts under O.B.C. (female) category for which

candidates were already recommended at the time of final declaration of the result in the year 2013 and therefore no post was available for recommending the name of Dr. Smt. Vaishali Dattatraya Zankar from O.B.C. (female) category. Obviously, the respondent no. 2 - the M.P.S.C. had to recommend the name of Dr. Smt. Vaishali Zankar as an additional candidate. It is further submitted that in all 74 candidates (73 regular and 01 additional) were recommended so far, however, the result of one Open (General) post is still remained to be declared. In view of the same, the respondent no. 2 - the M.P.S.C. wrote a letter dated 11.4.2018 (Exhibit R-1 page 142) to the Government asking as to whether there is any vacancy against which the candidate from Open (general) category can be adjusted, as declaration of result of which is under consideration.

22. In the rejoinder affidavit filed by the applicant (page 78) the applicant has produced on record the copy of letter dated 6.1.2018 accompanying with annexure A-2 (page 94) addressed by the respondent no. 2 the M.P.S.C. to the present applicant. Perusal of the said documents would make the position crystal clear that after recommending the name of Dr. Smt. Vaishali Zankar from O.B.C. (female) category, when the matter was sent to the Law & Judiciary Department of the State Government

inasmuch as all the 4 posts earmarked for O.B.C. female category were filled in and there was no vacancy for accommodating the said Dr. Smt. Vaishali Zankar. Law & Judiciary Department, therefore, categorically opined that it was for the respondent no. 1 to explore all the possibilities for giving appointment to her like creating additional post or giving appointment in the quota meant for promotees or by creating supernumerary post.

23. In this background, after much deliberation G.R. dated 23.7.2021 (page 194) is issued by the School Education & Sports Department, Government of Maharashtra creating one supernumerary post for accommodating said Dr. Smt. Vaishali Zankar. In view of the same, though 74 posts are filled in, one post thereof is treated as supernumerary post. Therefore, we are of the opinion that, out of 74 posts, one post from Open category is still available and it is vacant.

24. Upon perusal of pleadings of both the sides and documents placed on record, it is prima facie seen that next eligible candidate for considering for Open category is the applicant as he has secured 56 marks in the interview and all other 73 + 01 supernumerary post are filled in on the basis of merits of the candidates in the interview. It is, however, pertinent to note that as per judgment and order dated 15.4.2013 (Annex. A-3) of the

principal seat of this Tribunal at Mumbai, marks secured by the candidates in the screening test and interview are to be taken into consideration for selection of the candidates. However, as observed above, when one post from Open category is still vacant, filling of this post by way of giving appointment to the next eligible candidate can be made, subject to outcome of any such pending litigation, thereby no irretrievable prejudice would be caused to the respondent State including the private respondents. In view of the same, the present O.A. is disposed of by passing following order :-

ORDER

- (i) The Original application No. 105/2017 is partly allowed.
- (ii) The respondents are directed to accommodate the next eligible candidate by giving him / her appointment order to the post of Education Officer or equivalent post in the cadre of Maharashtra Education Service Group-A (Administrative Branch) from open category, in accordance with law, subject to outcome of pending litigations, if any, in respect of advertisement No. 2/2010 dated 21.10.2010 (Annex. A-1).

There shall be no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad

Date : 30.08.2021