



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

**WRIT PETITION NO.5331 OF 2018
WITH
CIVIL APPLICATION NO.7195 OF 2023
IN
WRIT PETITION NO.5331 OF 2018**

Pratibha d/o. Kalidas Darade,
Age : 34 Years, Occ. Service,
r/o. MIT, Tantra Vidya Mandir,
Primary School, Ambajogai,
Tq. Ambajogai, Dist. Beed

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
School Education Department (Primary),
Mantralaya Mumbai.
2. Education Officer (Primary),
Zilla Parishad, Beed.
3. The Education Officer (Primary),
Zilla Parishad Osmanabad.
4. Secretary,
Gramodyogik Shikshan Mandal, Aurangabad,
MIT Campus, Satara Road,
Beed Bypass, Aurangabad.
5. Head Master,
MIT Tantra Vidyamandir Primary School,
Ambajogai, Tq. Ambajogai, Dist- Beed.
6. Head Master,
Jagdale Mama Primary Vidyamandir, Washi,
Tq. Washi, Dist-Osmanabad.

7. Smt.Manjusha Arjun Mule,
Age: 40 years,
Occu: Service as Assistant Teacher,
R/o: Kholeshwar Primary School, Ambajogai,
Tq. Ambajogai, Dist- Beed. ..Respondents

Dr.R.J.Godbole, Advocate for petitioners
Mrs.D.S.Jape, AGP for respondent no.1
Mr.V.M.Chate, Advocate for respondent no.2
Mr.Ramesh Naiknaware, Advocate for respondent no.3
Mr.Ajay S. Deshpande, Advocate for respondent nos.4 to 6
Mr. R.D.Thorat, advocate for Respondent no.7

AND
WRIT PETITION NO.14300 OF 2021

1. Gramoudyogik Shikshan Mandal,
MIT Campus, Satara Road,
Beed Bye Pass, Aurangabad,
Through its General Secretary -
Mangesh s/o. Ratanlal Sharma,
Age : 47 Years,
R/O. As above
2. M.I.T. Tantra Vidya Mandir Primary School,
Ambajogai, Dist. Beed,
Through its Head Master -
Rajabhau Venkati Maske,
Age : 49 Years,
r/o. Ambajogai, Dist. Beed ..Petitioners

Vs.

1. The Education Officer, (Primary),
Zilla Parishad, Beed.
2. The Deputy Director of Education,
Regional Office, Aurangabad
3. Smt Pratibha d/o Kalidas Darade,
Age: 37 years, Occ: Nil,

R/o c/o Shri. P. L. Chate,
At Post Warwati, Tq. Ambajogai,
Dist. Beed Pin: 431 517

..Respondents

Mr.Ajay Deshpande, Advocate for petitioners
Mr.P.D.Suryawanshi, Advocate for respondent no.1
Mrs.D.S.Jape, AGP for respondent no.2
Dr.R.J.Godbole, Advocate for respondent no.3

**CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.**
RESERVED ON : JUNE 11, 2026
PRONOUNCED ON : JUNE 17, 2026

JUDGMENT (*Per Ajit B. Kadethankar, J.*) :-

1. Preface:

1.1 Both these Writ Petitions involve common issues amongst the same parties. Petitioner in Writ Petition No.5331 of 2018 challenges act of the School Management and the Education Officer interchanging 'approval and appointment' between herself and the Respondent no.7. During the pendency of the Writ Petition no.5331 of 2018, the School Management filed Writ Petition No.14300 of 2021 challenging reply affidavit filed by Education Officer in Writ Petition No.5331 of 2021. All the stakeholders in both the Writ Petitions are before us. In view of this, acceding to the joint requests of all the parties we heard these petitions vide a common hearing.

1.2 Rule. Rule made returnable forthwith in both the matters. By consent of the parties, the Writ Petitions are heard for final disposal. Writ Petition no.5331 of 2018 is the main matter which involves the predominant controversy and substantive rival contentions. The Writ Petition filed by the School Management has no separate cause of action, and its all contents are part of the controversy each party is arguing in the Writ Petition No.5331 of 2018. Hence we first deal with Writ Petition No.5331 of 2018. Writ Petition No.14300 of 2021 would gradually come in the discussion. For the sake of convenience and to avoid confusion, we refer the parties as per their status in Writ Petition No.5331 of 2018

2. Subject-matter :

2.1 The Respondent no.4 conducted two separate and independent selection processes to fill up some posts in the schools run by it. The nature of posts, number of posts, reservation to the post, qualification required for the post etc. everything in both the selection processes were distinct from each other. An unreserved unaided post of Shikshan Sevak was subject-matter of the first Selection Procedure. By due process, the School Management appointed Respondent no.7 on the said post on 15-06-2005.

- 2.2** Thereafter due to creation of further vacancies, the School Management initiated another selection process. One partially aided post of Shikshan Sevak reserved for Vimukta Jati and Nomadic Tribes ("VJNT" for brevity) was subject-matter of the subsequent selection process. This post was fallen vacant because one employee Mr. Ghoti resigned from the post. Most pertinent to note, this subject-matter post became available after the Respondent no.7 was already appointed in earlier selection process.
- 2.3** Acceding to the proposals for approval to the respective appointments submitted by the School Management, the concerned Education Officer rightly granted approval to Respondent no.7 (for unreserved/General category unaided post of Shikshan Sevak), and approval to the Petitioner (for partially aided post of Shikshan Sevak reserved for VJNT).
- 2.4** Subsequently, the School Management requested the Education Officer to interchange the approvals granted to the Petitioner and the Respondent no.7. Without giving any notice to the Petitioner and without assigning any reason, the Education Officer interchanged the approvals of the Petitioner and the Respondent no.7.

- 2.5** Resultantly, the Respondent no.7 is shown to be appointed on a post for which she had no occasion to undergo the selection process and while vacancy to the said post was even not in existence. Similarly, the Petitioner is shown to be appointed on such post for which she had never applied. The interchange in approval has deeper and sweeping effect on the terms and conditions of both the selection processes itself including vacancy, reservation, Grant status etc.
- 2.6** As such, the acts of the School Management and the concerned Education Officer are the subject-matter of controversy before us.

Writ Petition No. 5331 of 2018

3. Facts in brief:-

- 3.1** Respondent no. 4, a School Management runs two schools i.e. the Respondent no. 5 school in Beed District, and Respondent no.6 school in Dharashiv District.
- 3.2** Vide an advertisement dated 21-05-2005 published in daily Sakal, the Respondent no.4 invited applications from the deserving candidates to fill up 02 posts of 'Assistant Teacher' each one on 'grant-in-aid' and 'non-grant' basis, 04 posts of Shikshan Sevak requiring graduation qualification, 09 posts of

Shikshan Sevak requiring SSC, D.Ed. qualification, and 01 post of Instructor. This process included one unreserved unaided post of Shikshan Sevak.

- 3.3** Pursuant to the advertisement dated 21-05-2005, the School Management conducted selection procedure. Respondent no.7 applied for one unreserved unaided post of Shikshan Sevak. During selection process the selection committee found Respondent no.7 to be deserving and qualified to be appointed pursuant to her application. Resultantly, the School Management appointed Respondent no.7 on one unreserved unaided post of Shikshan Sevak (S.S.C., D.Ed.) vide an appointment order dated 15-06-2005. The appointment letter/order is on record.
- 3.4** After the Respondent no.7 was appointed on 15-06-2005, one assistant teacher namely Mr. Jaypalsingh Ghote serving at Respondent no.5 School resigned from his services citing his personal reasons. He was serving on a partially aided post of Shikshan Sevak reserved for VJNT. As such, due to resignation of Mr. Jaypalsingh Ghoti on 16-06-2005, a vacancy of one partially aided post of Shikshan-Sevak reserved for VJNT was created.

- 3.5** In due course of time there arose other vacancies too. Hence the School Management then published another advertisement on 08-07-2005 in daily Sakal thereby inviting applications from deserving candidates to fill in, (i) Two posts of Assistant Teachers, and (ii) Three posts of Shikshan Sevak on 'partially granted' basis reserved for Scheduled Caste ('SC' for brevity), Scheduled Tribe ('ST' for brevity), and 'VJNT/OBC' .
- 3.6** It is not in dispute that vacancy of the partially aided post of Shikshan Sevak (VJNT/OBC) category was created due to resignation of earlier employee namely Mr.Jaypalsingh Ghoti (VJNT).
- 3.7** Pursuant to the advertisement dated 08-07-2005, the School Management conducted selection procedure. The Petitioner applied for the partially aided post of Shikshan-Sevak reserved for VJNT, as she belongs to the said category. Selection process was conducted. The selection committee found the Petitioner deserving to be appointed. Hence, vide appointment order dated 15-07-2005, the Petitioner – Ms. Pratibha Darade came to be appointed on the subject-matter post of Shikshan Sevak (partially granted) reserved for VJNT.
- 3.8** On 17-08-2005, the School Management submitted proposals to the Education Officer (Primary), Zilla Parishad Beed

["Education Officer" for brevity] to seek approvals to the appointments of the Respondent no.7 - appointed on unreserved unaided post, and Petitioner's appointment - on partially grant basis (VJNT).

- 3.9** After scrutiny of the record, the Education Officer was pleased to accord approval to both the appointments vide order dated 13-02-2006 pursuant to the proposals filed by the School Management. Here, it is worth to note that although the table annexed to the approval order is a bit incompletely filled in, it's an undisputed fact that the approval to Respondent no.7's appointment was on the unaided post; and approval to Petitioner's appointment was on partially aided post.
- 3.10** Surprisingly, on 03-03-2006 the School Management wrote to the Education Officer thereby requesting to modify the approvals granted to the Respondent no.7 and the Petitioner. It was requested that approval to the Respondent no.7 be granted for partially aided post reserved for VJNT; and approval to Petitioner be granted for 'un-aided post'. Inasmuch, the status of the posts held by the Respondent no.7 and Petitioner was sought to be exchanged by the School Management, without assigning any reason.

- 3.11** The record speaks that without applying own mind, without giving any notice to the Petitioner and without even going into any details, the Education Officer (Primary), Zilla Parishad Beed directly interchanged the approvals granted to the Respondent no.7 and the Petitioner. Respondent no.7's appointment came to be approved on the post on which the Petitioner was appointed; and *vice-a-versa*. This is done vide the order dated 28-03-2006 that is impugned in this Writ Petition.
- 3.12** The Petitioner contends that she was unaware of the acts of the School Management and the Education Officer about interchanging the approvals. It is further contended that only on a communication dated 21-07-2012 from the Education Officer, the Petitioner learnt about wrongful approval to her services.
- 3.13** Therefore, the Petitioner filed a Writ Petition no.2675 of 2015 in this Court with multiple prayers. In nutshell, the Petitioner sought approval to her services on the post on which she was appointed.
- 3.14** During the hearing of the Petition, the petitioner was told by the School Management that it has moved a proposal to the Education Officer for her approval. Hence it was submitted

that a proposal was submitted by the School Management to the Education Officer to grant approval to the Petitioner on partially grant basis.

3.15 Upon hearing the parties, this Court vide its order dated 25-01-2017 directed to the Education Officer to pass appropriate order on the proposal within a stipulated time. Taking cognizance of the Petitioner's grievance about non-receipt of her salary, this Court directed the Petitioner to make a representation to the Education Officer about her dues. It was further directed to the Education Officer to determine quantum of payable due salary to the Petitioner after giving an opportunity of hearing to the School Management.

3.16 Consequently, the Petitioner too filed a detailed representation to the Education Officer on 03-03-2017. The record shows that the Education Officer conducted a hearing of the parties on 07-04-2017. While concluding the hearing, vide order dated 30-06-2017 the Education Officer observed that the Petitioner was appointed on unaided post. He further merely observed that the Petitioner be shifted to aided post on top priority upon creation of any vacancy of an aided post. The School Management was directed to initiate process to bring the unaided divisions on aided basis.

3.17 Feeling aggrieved by the order dated 30-06-2017 (Exh.A-page 18), the Petitioner has lodged the Writ Petition No.5331 of 2018 with following substantive prayers:

B) By an appropriate writ or order, quash and set aside the order passed by the respondent Education Officer dated 30.06.2017. i.e. Exhibit-A

C) By an appropriate writ or order, direct Education Officer (Primary) Zilla Parishad, Beed to grant an approval in favor of petitioner as against aided post and in favor of respondent no. 7 as against unaided post since the date of their respective appointments, i.e., w.e.f. 15.07.2005 and 15.06.2005 respectively.

D) By an appropriate writ or order, direct respondents to pay to the petitioner unpaid salary from the date of initial appointment i.e.. 15.07.2005 w.e.f. 01.08.2005 till this date as per prescribed pay scale & further be directed to pay regular salary till disposal of this writ petition as per prescribed pay scale.

3.18 During pendency of the Writ Petition No.5331 of 2018, the School Management terminated Petitioner's services on account of reduction of number of classes. This was on the basis of the seniority list prepared by the School Management in respect of the teachers appointed on grant basis (including partially grant) and non-grant basis. While services of the Respondent no.7 were protected, the Petitioner came to be terminated vide order dated 23-01-2021 issued by the School

Management. Decision of the School Management came to be effected by order dated 26-01-2021 issued by the Respondent no.5 - School Head master.

3.19 The Petitioner challenged the termination before the School Tribunal, Latur vide Appeal no.49 of 2022. Vide Judgment and Order dated 08-09-2023, learned Presiding Officer of the School Tribunal, Latur, partially allowed the appeal.

3.20 Observing that the impugned termination was in exception to the procedure contemplated under the Maharashtra Employees of Private Schools (Condition of Service) Rules 1981, petitioner's termination was set aside. She was directed to be reinstated with continuity in service, full back wages and all consequential benefits. Suffice to note, the Tribunal didn't touch the aspect of approval as the subject-matter is pending before this Court.

3.21 Vide Writ Petition No.1757 of 2024, the Respondent no.4- the School Management challenged the Judgment and Order passed by the School Tribunal. The said Writ Petition is pending without any interim order therein.

3.22 In present Writ Petition No.5331 of 2018, all the responding parties filed their respective replies.

3.23 The Respondent no.2 - Education Officer (Primary), Zilla Parishad, Beed didn't come before this court. Instead, filed reply affidavit through the Deputy Education Officer (Primary). On its careful scrutiny, it is apparently a half-hearted reply filed on oath by the said authority. It is stated that the Petitioner was appointed on unaided post of Shikshan Sevak and approval was issued accordingly. A chart of salary payable to an assistant teacher on regular pay scale was attached to the reply. The Authority however sought to cast liability on the School Management. Except this, nothing worth to note is offered by the Education Officer (Primary), Zilla Parishad, Beed, in the reply affidavit. In utmost irresponsible manner, the reply affidavit is filed.

3.24 The Respondent no.3- Education Officer (Primary), Zilla Parishad, Dharashiv (Osmanabad) submitted reply affidavit contending that neither her office has granted any approval to the Petitioner or the Respondent no.7 nor at the relevant time, there was any vacancy in the Respondent no.6 as per the record.

3.25 The Respondent no.7- Ms. Manjusha Mule also filed her reply affidavit. She disputes maintainability of the Writ Petition on various counts. The Respondent no.7 submits that she is not

concerned with the grievance of the Petitioner nor the Petitioner could raise any grievance at belated stage. It is her submission that later, she was declared surplus and came to be absorbed in some other school. The Respondent no.7 concludes her reply submitting that there is no cause of action against her, and that the Petitioner ought to have approached the appropriate authority for redressal of her grievance.

3.26 Respondent no.4 submitted that it has not committed any illegality. It is submitted that it has accommodated both the parties rightly. Suffice it to note, besides filing reply affidavit in Writ Petition No.5331 of 2018, the School Management filed Writ Petition No.14300 of 2021. We deal with the said petition at later part of the judgment.

4. SUBMISSIONS:-

4.1 Dr. Rajendra Godbole, learned advocate for the Petitioner produced copies of the letter dated 03-03-2006 submitted by the School Management to the Education Officer and the impugned order dated 28-03-2006 passed by the Respondent no.2 interchanging the appointments itself under the garb of interchanging the approvals. He was at pains to demonstrate the plight of the Petitioner. Dr.Godbole, learned advocate offered his following submissions:

- a) Respondent no.7 was appointed on an unreserved (General Category) unaided post of Shikshan Sevak pursuant to the selection procedure following the advertisement dated 21-05-2005. The partially aided post reserved for VJNT category was not included in the said selection process.
- b) The petitioner was appointed pursuant to advertisement dated 08-07-2005 for the partially aided post of Shikshan Sevak reserved for VJNT. The Respondent no.7 has not participated this selection process.
- c) Initially, approvals were rightly granted by the Education Officer on 13-02-2006.
- d) There is no justifiable reason for the School Management to seek interchange in the approvals of the Petitioner and the Respondent no.7.
- e) The Education Officer (Primary), Zilla Parishad, Beed, had no authority to accede to the request of the School Management and to interchange the approvals of the Petitioner and the Respondent no.7.
- f) No law – no procedure provides for such interchange in approval which in fact interchange the nature of

appointments itself.

- g) The conduct of the School Management is *mala-fide*. With an object to protect the interest of Respondent no.7, the School Management sought interchange in the approvals.
- h) The Education Officer (Primary), Zilla Parishad, Beed, illegally exercised its power and authority to interchange the approvals.
- i) The illegalities committed by the School Management and the Education Officer(Primary), Zilla Parishad, Beed, resulted into extreme hardship and harassment of the Petitioner.
- j) The Writ Petition no.14300 of 2021 filed by the School Management is not a bona fide petition. The same is without any separate cause of action. The prayers therein are highly objectionable. The School Management thereby made another farcical show of protecting interest of the Petitioner. In fact, the said Writ Petition is to protect the interest of Respondent no.7 in Writ Petition No.5331 of 2018. He points out that School Management has deliberately not brought Ms.Manjusha Mule in the picture.

- k) The interchange of approvals of the Petitioner and the Respondent no.7 be held illegal and restoring Petitioner's approval dated 13-02-2006 for partially aided post of Shikshan Sevak, consequential benefits be awarded to the Petitioner.

4.2

Mr. Ajay Deshpande, learned advocate representing the School Management (Respondent no.4) sought to counter the allegations raised by the Petitioner and to justify the stand of the School Management. Mr.Deshpande, learned advocate submits as under:

- a) The approach of the School Management is very clear and bonafides could be seen from filing of the reply affidavit and Writ Petition no.14300 of 2021.
- b) Since the unaided post of Shikshan Sevak was open to general categories, the Petitioner was rightly placed on the said post.
- c) The School Management had consistently been after the Education Officers for absorption of Ms. Pratibha Darade, and that the authorities have not discharged their duties yet;

- d) Due to subsequent grants to the subject-matter posts, Petitioner's grievance is already redressed, and that it is the responsibility of the Zilla Parishad authorities to pay the salary to her.
- e) No illegality is ever committed by the School Management, unlike averred by the Petitioner.
- f) Even if the Petitioner has undergone some hardship due to the unexplainable circumstances occurred way back in 2005, yet the School Management is keen to see that petitioner too gets appropriate relief. He submits that the School Management is after the Education Officer to see that the petitioner is absorbed soon.
- g) Mr. Ajay Deshpande, learned advocate fairly submits that both the Writ Petitions could be disposed of in terms of the prayer clause 'C' of the Writ Petition No.14300 of 2021, as it serves the purpose of justice in true sense.

4.3 Interestingly, the Education Officer (Primary), Zilla Parishad Beed is represented by different learned advocates in

respective Writ Petitions. Mr. Vithhal Chate, learned advocate represents the said authority in Writ Petition NO. 5331 of 2018, while Mr. Prashant Suryawanshi, learned advocate represents the same authority in Writ Petition No.14300 of 2021.

- a) However, the stand of the said authority is identical in both petitions.
- b) Except relying upon the reply affidavits filed in both the Writ Petitions, nothing is argued on behalf of the Education Officer (Primary), Zilla Parishad Beed.
- c) It is submitted that the record and the incidences are of the year 2005, and hence it is difficult to gather from the concerned authorities as to how and why the subject-matter orders on approvals were passed.
- d) It is sought to be submitted that instead of filing rejoinder to counter Education Officer's contentions in the Writ Petition no.5331 of 2028, the School Management has filed Writ Petition no.14300 of 2021 to create confusion.
- e) That, since *ab initio* the School Management has been instrumental in creating the entire chaos.

4.4 Mr. Naiknaware, learned advocate for Education Officer

(Primary), Zilla Parishad, Dharashiv (Osmanabad) submits that his stand is clear from the reply affidavit. His authority has neither issued original approval nor the subsequent approval. As such, there is nothing to be responded against the grievance of the respective parties.

- 4.5** Ms. Jape, learned Assistant Government Pleader submits that there is no role of the State Authorities to respond the Writ Petitions. However, she assists by submitting that it's the duty of the School Management and Respondent no.2 to explain how appointments itself could be changed under the garb of interchanging the approvals.
- 4.6** It is submitted on behalf of the Respondent no.7 that she is not at fault on any count. That, she was well qualified to be appointed on the subject-matter post and the approval is rightly accorded in her name. That, during the course of time she came to be declared surplus, and subsequently she is absorbed in other school. The Respondent no.7 disputes maintainability of the Writ Petition and contended that it is for the School Management and the Education Officer to redress the grievance of the Petitioner. That, in any case her interest needs to be protected.

5. Discussion and analysis:

We heard learned advocates for the respective parties at length. We have also carefully gone through the pleadings and documents attached to the pleadings. For adjudicating the petitions, we find that following are the only crucial issues for discussion:

(i) “Whether the School Management could sought interchange of approvals pertaining to Ms. Pratibha Darade and Ms. Manjusha Mule?” and (ii) “Whether the Education Officer (Primary), Zilla Parishad Beed is justified in interchanging the approvals of Ms. Pratibha Darade and Ms. Manjusha Mule which in fact results into interchange in appointments contrary to the selection process.”

5.1 We are of the considered view that the other factors argued by Mr. Godbole and Mr. Deshpande, learned advocates for the respective parties regarding enhancement in grant, seniority, right of absorption, sequence of absorption etc. would be relevant only upon adjudication of the crucial issues as framed above. We

find that answer to the framed issues have consequential effects on the other factors argued by the learned advocates.

5.2 It not disputed that the selection processes undertaken by the School Management vide advertisement dated 21-05-2005 and advertisement dated 08-07-2005 are absolutely separate and independent selection processes.

5.3 Each selection process is objectful as regards its contents. The first selection process vide advertisement dated 21-05-2005 was taken to its logical end. Respondent no.7 Ms. Manjusha Mule was appointed on unreserved unaided post of Shikshan Sevak pursuant to the advertisement dated 21-05-2005.

5.4 There is no dispute about her qualification. It is also not a case that Respondent no.7 ever challenged her own selection or appointment on the said post. She underwent the selection process and accordingly got appointed. The initial proposal was therefore moved by the School Management to the Education Officer for approval to Respondent no.7 corresponding to her appointment on unreserved unaided post of Shikshan

Sevak.

- 5.5** The selection process initiated vide advertisement dated 08-07-2005 is apparently a separate selection process independent from the earlier selection process dated 21-05-2005. Vacancy to the subject-matter partially aided post reserved for VJNT category arose only after the earlier selection process was complete.
- 5.6** Petitioner applied for this post and was appointed by due process on the partially aided post of Shikshan Sevak reserved for VJNT category. Her educational and social qualification is not disputed by anybody.
- 5.7** We find that the Respondent no.7 came to be appointed on 15-06-2005. One Mr. Jaypalsingh Ghoti functioning on partially aided post of Shikshan Sevak reserved for VJNT resigned from his post on 16-06-2005. Selection process to fill up the subject-matter partially aided post of Shikshan Sevak reserved for VJNT itself was initiated due to occurrence of its vacancy on account of resignation by Mr. Ghoti.
- 5.8** It is not the case that Respondent no.7 participated in the later selection process dated 08-07-2005 for partially aided post reserved for VJNT. Both the selection

processes were initiated by due process. As such, the intention of the School Management in filling up the specific posts vide separate selection process is very clear and unambiguous.

5.9 It is not in dispute that the selection processes were undertaken by due process and after seeking permission from the said Education Officer. It also goes without saying that there was no ambiguity or objection as regards to availability of vacancies for the relevant posts specified in each advertisement. In view of above, no party can take exception to the aforesaid facts.

5.10 On the backdrop of the aforesaid undisputed facts, we called upon the School Management with specific query as to how it could interchange the appointments and sought approval to Respondent no.7's appointment on partially aided post of Shikshan Sevak reserved for VJNT, which was not part of the selection process dated 21-05-2005 in which she was selected.

5.11 Instead of justifying the letter dated 03-03-2006 and interchanging the appointments and approvals, it was sought to argue on the point of grant to the schools, reduction in the classes, the exercise undertaken by the

School Management to pursue the Education Officer for absorption of the Petitioner. Much emphasize has been given on the word used as 'Shikshan Sevak' in the respective orders which are part of the litigation. However, we are not impressed with the explanations tendered by the School Management. In our view, it is not relevant or serving the purpose of our query.

5.12 The School Management miserably failed to demonstrate as to how it could seek interchange of the approvals and appointments of the Petitioner and the Respondent no.7. We could not receive any justifiable explanation from the side of the School Management.

5.13 We are shocked to see the contents of the letter dated 03-03-2006 wherein the School Management stated that the Respondent no.7 was appointed on 20-05-2006 on the partially aided post reserved for VJNT. It is further stated that the Petitioner was appointed on the unreserved unaided post. This is absolutely contrary to the record as has been observed above. On the other hand, Respondent no.7 clearly submitted that she was appointed on 15-06-2005.

5.14 It is the responsibility of the Education Officer to verify

the approval proposal and the appointment itself in the light of the terms and conditions of the selection process. An approval shall be granted only if the appointment is done in accordance with the terms and conditions, contents, objects and parameters prescribed in the advertisement of selection process. Education officer must examine vacancy, reservation- if any, social and educational qualification of the candidate, and participation of the candidate in the particular selection process.

5.15 What we find is that neither the Respondent no.7 participated in the selection process conducted for the subject-matter partially aided post of Shikshan-Sevak reserved for VJNT; nor the Petitioner had participated in the earlier selection process for unreserved unaided post of Shikshan-Sevak. While the Respondent no.7 was appointed, even vacancy to the subject-matter post was not in existence at all.

5.16 It is the well settled principle in service jurisprudence pertaining to private educational institutions that approval is an effect and result of a valid appointment. That, an approval and appointment cannot be

segregated, and they would always correspond to each other. That's why it is not merely an approval, but it is an individual approval. An appointment corresponds to a specific and relevant selection process. There are a lot many relevant factors behind grant of an approval. The process starts with availability of vacancy. Then comes the due process of selection which starts with permission from the Education Officer, followed by issuance of advertisement and conduct of actual selection. The law recognizes only a valid appointment. A valid appointment is only the one which is done in accordance with the aforesaid procedure as is laid down in the M.E.P.S. Act 1977.

5.17 Thus, by seeking the change in approval to the appointment of Respondent no.7, the School Management has sought to appoint her on such post which is created even after the date of her appointment. This, in our view, is absolutely unexplainable, unjustifiable and intolerable.

5.18 We have to accept the argument advanced by Dr.Godbole, learned advocate for the Petitioner that the concerned Education Officer (Primary), Zilla Parishad

Beed has absolutely not applied his mind while interchanging the approvals. We must observe that the School Management and the concerned Education Officer have acted illegally and most irresponsibly. The entire principles, procedure and law pertaining to selection and approval are not only disregarded, but those are quirkily moulded by the School Management and the Respondent no.2- the then Education Officer (Primary), Zilla Parishad Beed.

5.19

Much is argued by Mr. Deshpande, Mr. Chate, Mr. Suryawanshi, and Mr. Thorat learned advocates for the respective parties on the point of delay in filing the Writ Petition No.5331 of 2018. The record however speaks that the Petitioner was consistently pursuing the Zilla Parishad authorities in the mean period. She once filed Writ Petition No.2675 of 2015 which was disposed by this Court with certain directions. A hearing was also conducted by the Zilla Parishad authorities pursuant to directions issued by this Court and consistent follow up by the Petitioner. Under these circumstances, we do not accept that delay- if any, on the part of the Petitioner would legalize the illegalities committed by the School

Management and the concerned Education Officer. Under exercise of our power u/a 226 of the Constitution, we brush out such technical objection, which is advanced to disguise the illegalities of the objectors.

5.20 We take on record the objection raised by the School Management, the Education Officer and Respondent no.7 that the Petitioner can not raise any grievance once having served on the unaided post for years. However, we discard this objection for the reason that the selections are done in accordance with the law i.e. in accordance with the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977. All the service conditions are governed by the Act and the Rules thereunder. Hence, there can be no estoppel to law. Merely because the Petitioner served on the said unaided post for certain years shall not come in her way to question the serious illegalities committed by the School Management and the concerned Education Officer taking the law and procedure in their hand.

5.21 In the circumstances, the interchange of approvals and appointments of the Petitioner in Writ Petition No.5331 of 2018 and the Respondent no.7 therein must go, and the

petition must succeed.

Writ Petition No.14300 of 2021

We now deal with the Writ Petition No.14300 of 2021.

5.22 The School Management has filed Writ Petition No.14300 of 2021 with following substantive prayers:-

B) The liability fastened on the petitioners by R-1 under the Reply Affidavit at Exh. I dated 25.7.2019, payable to R-3- Smt. Pratibha Kalidas Darade, may kindly be quashed and set aside, being unjust and baseless.

C) The respondent No. 1 may kindly be directed to release salary of R-3 Smt. Pratibha Kalidas Darade from the academic year 2008 2009, considering the material on record, nature of appointment as well as approval accorded thereto by R-1, as per law, to subserve the ends of justice and to absorb R-3 in any other school within the jurisdiction of R-1.

5.23 At the outset, we are constrained to record that filing of a separate Writ Petition to challenge a reply affidavit of a co-respondent filed in another Writ Petition, is absolutely foreign to the practice and procedure. It is seen that the School Management belatedly filed reply affidavit in Writ Petition No.5331 of 2018. The School Management could have offered its defense as also counter to the stand taken by the Education Officer in Writ Petition No.5331 of

2018 by filing re-joinder/additional reply, as the case may be. However, the School Management instead filed this Writ Petition.

5.24 In this petition, the main prayer is prayer clause “B”. At prayer clause ‘B’ the School Management challenged the averments made by the Education Officer in reply affidavit filed in Writ Petition No.5331 of 2018. This is highly objectionable and we do not approve such practice.

5.25 The prayer clause ‘C’ in Writ Petition no.14300 of 2021 is nothing but an attempt to camouflage the illegalities committed by the School Management in protecting the interest of the Respondent no.7 in the Writ Petition No.5331 of 2018. Worth to note, the School Management conveniently didn’t array her in its Writ Petition no.14300 of 2021.

5.26 Instead of explaining how lawfully the School Management could place Respondent no.7 on the subject-matter partially aided post of VJNT on which the Petitioner was already appointed, it has tried to show that the School Management is acting in the interest of

the Petitioner for her absorption. In fact, the School Management has sought to get rid of any liability.

The Writ Petition No.14300 of 2021 in our view, is liable to be dismissed.

6. CONCLUSION:

- (a) For the reasons recorded above the Writ Petition No.5331 of 2018 succeeds and the Writ Petition No.14300 of 2021 stands dismissed. The issues framed for consideration are answered in 'negative'.
- (b) We hold that "an approval is an individual approval which must correspond to the terms and conditions prescribed in the selection procedure in which a candidate is appointed"; and "approval can not be granted for such post which was not part of the selection procedure; nor can be granted for which a candidate didn't undergo its selection procedure".
- (c) Due to the illegal interchange of the approvals and appointments, a number of unusual consequences have taken place. Initially, the petitioner in Writ Petition No.5331 of 2018 was declared surplus and also was refused to be absorbed citing the reason of

her being appointed on unaided post. On the other hand, the Respondent no.7 in Writ Petition No.5331 of 2018 not only enjoyed salary from the Zilla Parishad proportionate to the percentage of grant in aid, but also got absorbed conveniently on being declared surplus. This all needs to be set right in view of our observations and the findings.

- (d) The act and conduct of the School Management, as observed above, is highly abominable. Giving utter disregard to the law and procedure, it not only got the approvals interchanged but practically made appointments contrary to the selection procedure and the permission granted by the Zilla Parishad authorities. This made the Petitioner to run from pillar to pole, and illegally deprived her from her legitimated rights just to protect the interest of the Respondent no.7.
- (e) At no point of time the School Management explained how it could seek interchange of approvals and appointments contrary to the selection procedures. Instead, it went to cover its illegality under the garb of prayer clause 'C' in Writ Petition

No.14300 of 2021.

- (f) The School Management and the Education Officer (Primary), Zilla Parishad Beed inasmuch played wrong with lives of the Petitioner as also the Respondent no.7. This Court would not be a mute spectator in the given circumstances to the things surfaced. We are of the considered view that the School Management is liable to be saddled with exemplary costs. So also, the Zilla Parishad Beed authority must take cognizance of the illegality committed by the then Education Officer (Primary), Zilla Parishad Beed who issued the impugned order dated 28-03-2006. We are of the considered view that cost must also be imposed on the said authority.

- (7)** Hence we pass following order:

ORDER

- I. The order dated 28-03-2006 passed by the Education Officer (Primary), Zilla Parishad, Beed, interchanging approvals and appointments of Ms. Pratibha Darade and Ms. Manjusha Mule (petitioner and respondent no.7 respectively in Writ Petition No.5331 of 2018),

and communication dated 30-06-2017 pursuant to the said order, are quashed and set aside. Earlier approvals to the Petitioner's appointment on partially aided post and approval to Respondent no.7's appointment on unaided post shall hold the field.

- II. The Petitioner in Writ Petition No.5331 of 2018 is held to have been appointed on partially aided post of Shikshan Sevak reserved for VJNT vide appointment order dated 15-07-2005 and is accordingly eligible for all consequential benefits of seniority, enhancement in grant, regular salary, absorption etc.
- III. Within a period of four weeks from today, the Education Officer (Primary), Zilla Parishad Beed shall pay the unpaid payable salary dues as per the prescribed pay scale to the Petitioner in Writ Petition No.5331 of 2018 holding '15-07-2005' as her date of appointment. Needless to mention the dues shall adjust the amount already paid and the honorarium receivable for initial three years. The petitioner in Writ Petition No.5331 of 2018 is permitted to withdraw the amount pending in this court, if any.

- IV. The Respondent no.7 in Writ Petition No.5331 of 2018 is held to have been appointed on unaided post of Shikshan Sevak as per appointment order dated 15-06-2005 issued by the Respondent no.4 School Management; and is bound by the consequences including declaration of being surplus etc. Consequences to follow.
- V. The Education Officer (Primary), Zilla Parishad, Beed, shall immediately initiate recovery of salary grants issued for Respondent no.7 in the Writ Petition No.5331 of 2018.
- VI. The Education Officer (Primary), Zilla Parishad, Beed shall cause to effect and implement consequences of this order without any delay and default, within a period of four weeks from today.
- VII. In the circumstances, Respondent no.4 - School Management and Respondent no.2 - Education Officer (Primary) in Writ Petition No.5331 of 2018 each shall pay a cost of Rs. 50,000/- to the Petitioner in Writ Petition No.5331 of 2018. The cost be deposited in

this Court within a period of four weeks, and the Petitioner is permitted to withdraw the cost amount. If such cost is not deposited within the given time, it shall be recovered as land revenue.

- VIII. The Zilla Parishad, Beed is permitted to recover the cost amount from the concerned Education Officer who passed the impugned order dated 28-03-2006. Additionally, the authorities of Zilla Parishad Beed shall strictly initiate departmental action against the concerned Education Officer and shall take it to its logical end in accordance with law.
- IX. Writ Petition No.5331 of 2018 stands allowed accordingly. Rule made absolute in Writ Petition in above terms.
- X. Writ Petition No.14300 of 2021 stands dismissed. Rule stands discharged accordingly.
- XI. Pending Civil Application(s) if any, stand disposed.

[AJIT B. KADETHANKAR, J.]

[KISHORE C. SANT, J.]

KBP

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