



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

District : Dhule

WRIT PETITION NO.5743 OF 2015

Sudhakar Ramrao Ahirrao,
Age : 45 Years, Occupation : Nil,
R/o. : Devbhane,
Taluka & District : Dhule.

.....PETITIONER

VERSUS

1. State of Maharashtra,
Through Principal Secretary,
Secondary & Higher Secondary
Education Department, Mantralaya,
Mumbai – 32.
2. The Deputy Director of Education,
Nasik Division, Nasik.
3. The Education Officer (Secondary),
Zilla Parishad, Dhule.
4. Hiraji Shravan Borse High School
& Junior College, Kapadane,
Taluka & District : Dhule,
Through it's Headmaster.

.....RESPONDENTS

Mr. P. B. Shirsath, Advocate for Petitioner

Mr. Ruchir S. Wani, AGP for Respondent Nos.1 to 3 – State

Mr. Azizoddin R. Syed, Advocate for Respondent No.4

**CORAM : KISHORE C.SANT AND
AJIT B. KADETHANKAR, JJ.**

RESERVED DATE : 17.07.2026

PRONOUNCED DATE : 22.07.2026

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

. Rule. Rule made returnable forthwith. Heard the parties for final disposal by their consent.

1. The petitioner has filed this petition with following substantive prayers :

“(B) Issue a writ of certiorari or writ in the nature of certiorari thereby quashing and setting aside the order dated 28.01.2015 passed by the Respondent No.3, Education Officer (Secondary), Zilla Parishad, Dhule and for that purpose issue necessary writ, order or directions.

(C) Issue a writ of mandamus or writ in the nature of mandamus thereby directing the Respondent No.3, the Education Officer (Secondary), Zilla Parishad, Dhule to absorb and accommodate the Petitioner on the post of Shikshan Sevak in any school under his control and for that purpose issue necessary writ, order or directions.”

FACTS IN BRIEF :

(a) The petitioner is qualified with a graduation degree as Bachelor of Arts i.e. B.A. with English, and also a Bachelor's degree in Education i.e. and B.Ed.

Vide an appointment order dated 01.11.2006, the petitioner was appointed as Shikshan Sevak at respondent No.4 - Hiraji Shravan Borse High School, Kapadane, Taluka and District Dhule.

(b) The appointment was for a period of three years commencing with effect from 06.11.2006. It is not in dispute that the appointment was made through proper procedure.

(c) Pursuant to the appointment, the Education Officer (Secondary), Zilla Parishad, Dhule approved petitioner's appointment vide approval dated 20.04.2007.

(d) On 29.12.2008, the Education Officer reduced four divisions in Hiraji Shravan Borse High School consequent to students strength verification. Consequently, five posts of trained graduate teachers, two posts of trained non-graduate teachers, and one post of part-time graduate teacher came to be cancelled.

(e) In the light of the above, respondent No.4 - the School Management discharged the petitioner from service on 31.12.2008.

(f) It appears that the School Management filed Writ Petition No.4118 of 2009 before this Court against the reduction of school divisions. In the said writ petition, a status quo order came to be passed on 08.03.2010.

(g) On 22.07.2011, the Education Officer (Secondary), Zilla Parishad, Dhule informed the Headmaster of Hiraji Shravan Borse High School to reinstate the petitioner and five other teachers with retrospective effect in view of Status Quo order.

(h) On 06.07.2012, the Education Officer again addressed a communication to the Headmaster, thereby cancelling the letter dated 22.07.2011 instructing to re-instate the petitioner.

(i) Feeling aggrieved thereby, the petitioner filed Writ Petition No.10227 of 2014 before this Court.

(j) This Court, vide order dated 18.11.2014, disposed of Writ Petition No.10227 of 2014 by permitting the petitioner to make a comprehensive representation to the Education Officer describing his grievance. Further directions were issued to the Education Officer to decide such representation after giving an opportunity of hearing to the petitioner within a stipulated time.

(k) Accordingly, on 28.11.2014 the petitioner appealed to the Education Officer seeking redressal of this grievance. The Education Officer conducted a hearing pursuant to the grievance lodged by the petitioner. Vide order dated 28.01.2015, the Education Officer rejected the representation filed by the petitioner. Hence, the petitioner is before this Court.

SUBMISSIONS :

(a) Mr. P. B. Shirsath, learned advocate for the petitioner would submit that there is no dispute as regards the qualification of the petitioner, nor is there any objection as regards the legality of the selection process under which he was appointed as Shikshan Sevak.

(b) He submits that the petitioner's services were duly approved by the Education Officer.

(c) Under these circumstances, according to him the petitioner was not liable to be discharged from service. The petitioner had completed 26 months of service and therefore, it was incumbent upon the Education Officer to immediately absorb the petitioner on any vacant post in any school under his jurisdiction.

(d) He would further submit that the Zilla Parishad authorities were required to adhere to the guidelines laid down in the Government Resolution dated 10.06.2005. He submits that he ought to have been declared as surplus and then ought to have been absorbed immediately on a suitable vacant post in any school falling within the jurisdiction of the Zilla Parishad Dhule.

(e) Mr. Shirsath's alternate submission is that the Zilla Parishad authorities were under an obligation at least to reappoint the petitioner whenever vacancies became available. The Government Resolution dated 07.01.2005 clearly provides if a Shikshan Sevak has completed one year of service, he should not be discharged, but orders should be issued for his reappointment.

(f) On this basis, Mr. Shirsath submits that it was incumbent upon the Education Officer to reappoint the petitioner in any school in the District with effect from 01.01.2009 and to grant him the regular pay scale upon completion of three years as Shikshan Sevak.

(g) Mr. Shirsath invited our attention to page No.50 of the paper-book, being a communication addressed by the Education Officer to the learned Assistant Government Pleader appearing before this Court. According to him, paragraph 3 of the said communication clearly indicates that vacancies were available on which the petitioner could have been accommodated.

(h) Mr. Ruchir S. Wani, learned Assistant Government Pleader appearing for the Education Officer (Secondary), Zilla Parishad, Dhule, opposed the petition. He submits that the authority has filed an affidavit-in-reply demonstrating why the petitioner's prayer cannot be accepted.

(i) Mr. Wani submits that the petitioner was not entitled to absorption for want of completion of three years as Shikshan Sevak.

(j) It is his further contention that even reappointment was not possible owing to the gap between the date on which the petitioner became surplus and the proposed reappointment.

(k) Mr. Wani submits that the provision relied upon by the petitioner from the Government Resolution dated 07.01.2005 relates only to counting past service of a Shikshan Sevak for a fresh appointment. He submits that the petitioner failed to make his own efforts for reappointment as contemplated under Clause 4 of the Government Resolution dated 10.06.2005 and therefore, his previous service cannot be taken into consideration. According

to him, there is a gap of at least six years, i.e. from 31.12.2008 to 31.12.2014. Hence, in view of Clause 5 of the Government Resolution dated 10.06.2005, reappointment could not have been granted after the lapse of three years.

(l) On these grounds, Mr. Wani prayed for dismissal of the writ petition.

(m) Mr. Syed, learned advocate appearing for the School Management, submitted that as per the observations of the Education Officer, there was no vacancy in respondent No.4-School on which the petitioner could be accommodated.

CONSIDERATIONS :

2. We have heard the learned advocates including the learned Assistant Government Pleader for the respective parties at length. Indeed, there is no dispute as regards petitioner's qualification and the legality of his appointment. The petitioner had hardly completed 26 months on the post of Shikshan Sevak when, on account of reduction of divisions in the School and cancellation of posts, he was discharged from service. Obviously, the letter dated 22.07.2011 issued by the Education Officer directing the Headmaster to reinstate the petitioner with retrospective effect could not be justified. The petitioner had already been relieved from service much before the passing of the status quo order. Hence, we find that the subsequent letter dated 06.07.2012 issued by the Education Officer, thereby cancelling the earlier

letter dated 22.07.2011, cannot be faulted.

3. During the course of hearing, Mr. Shirsath, raised another contention that the petitioner ought to have been at least reappointed by the Education Officer in view of Clause 5 of the Government Resolution dated 10.06.2005. This is a situation where both the parties are relying upon the very same provision i.e. Clause 5 of the Government Resolution dated 10.06.2005. While the Education Officer has held that more than six years had elapsed from the date of the petitioner's discharge from service, therefore, he would fall outside the purview of Clause 5. Mr. Shirsath, learned advocate sincerely submits that the petitioner had immediately approached this Court by filing Writ Petition No.10227 of 2014 challenging the letter/order dated 06.07.2012.

Clause 5 of the government resolution dated 10.06.2005 is reproduced as below for ready reference:

‘उपरोक्त (४) नुसार अतिरिक्त ठरलेल्या शिक्षणसेवकाने पुनर्नियुक्तीसाठी स्वतः प्रयत्न करणे आवश्यक राहिल. अतिरिक्त ठरणे व पुनर्नियुक्ती यामधील खंड कमाल तीन वर्षांपेक्षा जास्त असू नये. असल्यास, त्याची पुर्वीची शिक्षणसेवक म्हणून केलेली सेवा सेवानिवृत्तीसाठी ग्राह्य धरली जाणार नाही. तसेच त्याची पुन्हा तीन वर्षासाठी शिक्षणसेवक म्हणूनच नियुक्ती करण्यात यावी.’

4. We find that pursuant to the order passed by this Court in Writ Petition No.10227 of 2014 on 18.11.2014, the petitioner immediately filed an appeal

before the Education Officer on 28.11.2014, within the limitation given by this Court. The said appeal came to be rejected by the Education Officer on 28.01.2015, against which the present petition has been filed. We find that the petitioner was diligently pursuing his remedy, firstly before this Court and subsequently before the Education Officer, for enforcement of his right. Such proceedings, in our view constitute petitioner's bona fide efforts for seeking reappointment under Clause 5 of the Government Resolution dated 10.06.2005.

5. We are conscious of the fair submissions advanced by Mr. Shirsath, learned advocate that although the petitioner could not be absorbed on account of his failure to complete three years' service as a Shikshan Sevak, he could at least be considered for reappointment in view of government resolution dated 07.01.2005. As per the said government resolution of 07.01.2005, on account of reduction in students strength if school divisions are reduced retrenching services of a Shikshan Sevak, he would be entitled for regular pay scale upon his re-appointment. As such, his previous services need to be counted for completion of 03 years on the post of Shikshan Sevak.

6. A comprehensive reading of Rule 26 under the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 provides that a Shikshan

Sevak/Assistant Teacher must have completed the probation period for being declared as surplus for absorption. Then and then only such employee can be subjected for absorption. We have keenly gone through the observations recorded by the Education Officer in the impugned order dated 28.01.2015. We are satisfied with the reasoning assigned by the Education Officer that the petitioner could not be absorbed for want of completion of three years' service i.e. for want of being a permanent employee. Consequently, the petitioner could not be directed to be absorbed. However, we express that we are not satisfied with the reasons recorded by the Education Officer while holding that the petitioner was not entitled to reappointment on account of delay. Clause 5 of the government resolution dated 10.06.2005 nowhere dis-entitles an employee for re-appointment on account of delay. It is clearly provided that only if there is delay of more than three years, the previous service of such employee shall not be considered for pensionary benefits, and that such employee's initial three years on re-appointment post shall be of Shikshan Sevak.

7. We feel that the petitioner's conduct of immediate approaching to this Court by filing Writ Petition No.10227 of 2014, followed by the appeal before the Education Officer, constitutes his bona fide efforts to seek reappointment. The Petitioner, in our considered view, is certainly entitled for re-appointment

as per Clause 5 of the government resolution dated 10.06.2005. In view of our findings that there is no delay under the said clause, his past service as Shikshan Sevak for 26 months shall be counted for service benefit purposes.

8. Hence, we find that the petition deserves to be partly allowed with a direction to the Education Officer to consider petitioner's case for 're-appointment' on priority in the event a suitable vacancy of a trained graduate teacher is available in the District in accordance with Clause 5 of the Government Resolution dated 10.06.2005. Obviously in such event, the petitioner shall be entitled for the benefit under the government resolution dated 07.01.2005.

9. Hence, we pass following order:

ORDER

- I. Writ Petition stands partly allowed.
- II. The Respondent No.2 i.e. the Education Officer (Secondary), Zilla Parishad Dhule shall on priority re-appoint the Petitioner on suitable and available vacancy in any school in the District Dhule.
- III In the event of such re-appointment, the Respondent No. 2 shall count Petitioner's past service of 26 months for service

benefits.

IV Writ Petition stands disposed of in the above observations.

V. Rule is made absolute accordingly.

[AJIT B. KADETHANKAR, J.]

[KISHORE C. SANT J.]

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